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111TH CONGRESS
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H. R. 2998

To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2009

Mr. WAXMAN (for himself and Mr. MARKEY of Massachusetts) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Foreign Affairs, Ways and Means, Financial Services, Education and Labor, Science and Technology, Transportation and Infrastructure, Natural Resources, Agriculture, Oversight and Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''American Clean Energy and Security Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. International participation.

TITLE I—CLEAN ENERGY

Subtitle A—Combined Efficiency and Renewable Electricity Standard

Sec. 101. Combined efficiency and renewable electricity standard.
Sec. 102. Clarifying State authority to adopt renewable energy incentives.

Subtitle B—Carbon Capture and Sequestration

Sec. 111. National strategy.
Sec. 112. Regulations for geologic sequestration sites.
''Sec. 813. Geologic sequestration sites.
Sec. 113. Studies and reports.
Sec. 114. Carbon capture and sequestration demonstration and early deployment program.
Sec. 115. Commercial deployment of carbon capture and sequestration technologies.
''Sec. 786. Commercial deployment of carbon capture and sequestration technologies.
Sec. 116. Performance standards for coal-fueled power plants.
''Sec. 812. Performance standards for new coal-fired power plants.

Subtitle C—Clean Transportation

Sec. 121. Electric vehicle infrastructure.
Sec. 122. Large-scale vehicle electrification program.
Sec. 123. Plug-in electric drive vehicle manufacturing.
Sec. 124. Investment in clean vehicles.
Sec. 125. Advanced technology vehicle manufacturing incentive loans.
Sec. 126. Amendment to renewable fuels standard.
Sec. 127. Open fuel standard.
Sec. 128. Diesel emissions reduction.
Sec. 129. Loan guarantees for projects to construct renewable fuel pipelines.

Subtitle D—State Energy and Environment Development Accounts

Sec. 131. Establishment of SEED Accounts.
Sec. 132. Support of State renewable energy and energy efficiency programs.

Sec. 133. Support of Indian renewable energy and energy efficiency programs.

Subtitle E—Smart Grid Advancement

Sec. 141. Definitions.
Sec. 142. Assessment of Smart Grid cost effectiveness in products.
Sec. 143. Inclusions of Smart Grid capability on appliance ENERGY GUIDE labels.
Sec. 144. Smart Grid peak demand reduction goals.
Sec. 145. Reauthorization of energy efficiency public information program to include Smart Grid information.
Sec. 146. Inclusion of Smart Grid features in appliance rebate program.

Subtitle F—Transmission Planning

Sec. 151. Transmission planning.
Sec. 152. Net metering for Federal agencies.
Sec. 153. Support for qualified advanced electric transmission manufacturing plants, qualified high efficiency transmission property, and qualified advanced electric transmission property.

Subtitle G—Technical Corrections to Energy Laws

Sec. 161. Technical corrections to Energy Independence and Security Act of 2007.
Sec. 162. Technical corrections to Energy Policy Act of 2005.

Subtitle H—Energy and Efficiency Centers and Research

Sec. 171. Energy Innovation Hubs.
Sec. 172. Advanced energy research.
Sec. 173. Building Assessment Centers.
Sec. 174. Centers for Energy and Environmental Knowledge and Outreach.

Subtitle I—Nuclear and Advanced Technologies

Sec. 181. Revisions to loan guarantee program authority.
Sec. 182. Purpose.
Sec. 183. Definitions.
Sec. 184. Clean energy investment fund.
Sec. 185. Energy technology deployment goals.
Sec. 186. Clean energy deployment administration.
Sec. 187. Direct support.
Sec. 188. Indirect support.
Sec. 189. Federal credit authority.
Sec. 190. General provisions.
Sec. 191. Conforming amendments.

Subtitle J—Miscellaneous

Sec. 195. Increased hydroelectric generation at existing Federal facilities.
Sec. 196. Clean technology business competition grant program.
Sec. 197. National Bioenergy Partnership.
Sec. 198. Office of Consumer Advocacy.

TITLE II—ENERGY EFFICIENCY

Subtitle A—Building Energy Efficiency Programs

Sec. 201. Greater energy efficiency in building codes.
Sec. 202. Building retrofit program.
Sec. 203. Energy efficient manufactured homes.
Sec. 204. Building energy performance labeling program.
Sec. 205. Tree planting programs.
Sec. 206. Energy efficiency for data center buildings.

Subtitle B—Lighting and Appliance Energy Efficiency Programs

Sec. 211. Lighting efficiency standards.
Sec. 212. Other appliance efficiency standards.
Sec. 213. Appliance efficiency determinations and procedures.
Sec. 214. Best-in-Class Appliances Deployment Program.
Sec. 215. WaterSense.
Sec. 216. Federal procurement of water efficient products.
Sec. 217. Water efficient product rebate programs.
Sec. 218. Certified stoves program.
Sec. 219. Energy Star standards.

Subtitle C—Transportation Efficiency

Sec. 221. Emissions standards.

"Part B—Mobile Sources

"Sec. 821. Greenhouse gas emission standards for mobile sources.
Sec. 222. Greenhouse gas emissions reductions through transportation efficiency.

"Part D—Transportation Emissions

"Sec. 841. Greenhouse gas emissions reductions through transportation efficiency.
Sec. 223. SmartWay transportation efficiency program.
"Sec. 822. SmartWay transportation efficiency program.
Sec. 224. State vehicle fleets.

Subtitle D—Industrial Energy Efficiency Programs

Sec. 241. Industrial plant energy efficiency standards.
Sec. 242. Electric and thermal waste energy recovery award program.
Sec. 243. Clarifying election of waste heat recovery financial incentives.
Sec. 244. Motor market assessment and commercial awareness program.
Sec. 245. Motor efficiency rebate program.

Subtitle E—Improvements in Energy Savings Performance Contracting

Sec. 251. Energy savings performance contracts.

Subtitle F—Public Institutions

Sec. 261. Public institutions.
Sec. 262. Community energy efficiency flexibility.
Sec. 263. Small community joint participation.
Sec. 264. Low income community energy efficiency program.

Subtitle G—Miscellaneous

Sec. 271. Energy efficient information and communications technologies.

Sec. 272. National energy efficiency goals.
Sec. 273. Affiliated island energy independence team.
Sec. 274. Product carbon disclosure program.

TITLE III—REDUCING GLOBAL WARMING POLLUTION

Sec. 301. Short title.

Subtitle A—Reducing Global Warming Pollution

Sec. 311. Reducing global warming pollution.

"TITLE VII—GLOBAL WARMING POLLUTION REDUCTION PROGRAM

"PART A—GLOBAL WARMING POLLUTION REDUCTION GOALS AND TARGETS

"Sec. 701. Findings and purpose.
"Sec. 702. Economy-wide reduction goals.
"Sec. 703. Reduction targets for specified sources.
"Sec. 704. Supplemental pollution reductions.
"Sec. 705. Review and program recommendations.
"Sec. 706. National Academy review.
"Sec. 707. Presidential response and recommendations.

"PART B—DESIGNATION AND REGISTRATION OF GREENHOUSE GASES

"Sec. 711. Designation of greenhouse gases.
"Sec. 712. Carbon dioxide equivalent value of greenhouse gases.
"Sec. 713. Greenhouse gas registry.

"PART C—PROGRAM RULES

"Sec. 721. Emission allowances.
"Sec. 722. Prohibition of excess emissions.
"Sec. 723. Penalty for noncompliance.
"Sec. 724. Trading.
"Sec. 725. Banking and borrowing.
"Sec. 726. Strategic reserve.
"Sec. 727. Permits.
"Sec. 728. International emission allowances.

"PART D—OFFSETS

"Sec. 731. Offsets Integrity Advisory Board.
"Sec. 732. Establishment of offsets program.
"Sec. 733. Eligible project types.
"Sec. 734. Requirements for offset projects.
"Sec. 735. Approval of offset projects.
"Sec. 736. Verification of offset projects.
"Sec. 737. Issuance of offset credits.
"Sec. 738. Audits.
"Sec. 739. Program review and revision.
"Sec. 740. Early offset supply.
"Sec. 741. Environmental considerations.
"Sec. 742. Trading.
"Sec. 743. International offset credits.

"PART E—SUPPLEMENTAL EMISSIONS REDUCTIONS FROM REDUCED DEFORESTATION

"Sec. 751. Definitions.
"Sec. 752. Findings.
"Sec. 753. Supplemental emissions reductions through reduced deforestation.
"Sec. 754. Requirements for international deforestation reduction program.
"Sec. 755. Reports and reviews.
"Sec. 756. Legal effect of part.
Sec. 312. Definitions.
"Sec. 700. Definitions.

Subtitle B—Disposition of Allowances

Sec. 321. Disposition of allowances for global warming pollution reduction program.

"PART H—DISPOSITION OF ALLOWANCES

"Sec. 781. Allocation of allowances for supplemental reductions.
"Sec. 782. Allocation of emission allowances.
"Sec. 783. Electricity consumers.
"Sec. 784. Natural gas consumers.
"Sec. 785. Home heating oil, propane, and kerosene consumers.
"Sec. 787. Allocations to refineries.
"Sec. 788. [SECTION RESERVED].
"Sec. 789. Climate change consumer refunds.
"Sec. 790. Exchange for State-issued allowances.
"Sec. 791. Auction procedures.
"Sec. 792. Auctioning allowances for other entities.
"Sec. 793. Establishment of funds.
"Sec. 794. Oversight of allocations.

Subtitle C—Additional Greenhouse Gas Standards

Sec. 331. Greenhouse gas standards.

"TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

"Sec. 801. Definitions.

"PART A—STATIONARY SOURCE STANDARDS

"Sec. 811. Standards of performance.

"PART C—EXEMPTIONS FROM OTHER PROGRAMS

"Sec. 831. Criteria pollutants.
"Sec. 832. International air pollution.
"Sec. 833. Hazardous air pollutants.
"Sec. 834. New source review.
"Sec. 835. Title V permits.
Sec. 332. HFC Regulation.
Sec. 333. Black carbon.

"PART E—BLACK CARBON

"Sec. 851. Black carbon.
Sec. 334. States.
Sec. 335. State programs.

"PART F—MISCELLANEOUS

"Sec. 861. State programs.
"Sec. 862. Grants for support of air pollution control programs.
Sec. 336. Enforcement.
Sec. 337. Conforming amendments.
Sec. 338. Davis-Bacon compliance.
Sec. 339. National strategy for domestic biological carbon sequestration.

Subtitle D—Carbon Market Assurance

Sec. 341. Carbon market assurance.

Subtitle E—Additional Market Assurance

Sec. 351. Regulation of certain transactions in derivatives involving energy commodities.
Sec. 352. No effect on authority of the Federal Energy Regulatory Commission.
Sec. 353. Inspector General of the Commodity Futures Trading Commission.
Sec. 354. Settlement and clearing through registered derivatives clearing organizations.
Sec. 355. Limitation on eligibility to purchase a credit default swap.
Sec. 356. Transaction fees.
Sec. 357. No effect on antitrust law or authority of the Federal Trade Commission.
Sec. 358. Regulation of carbon derivatives markets.
Sec. 359. Cease-and-desist authority.

TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

Subtitle A—Ensuring Real Reductions in Industrial Emissions

Sec. 401. Ensuring real reductions in industrial emissions.

"PART F—ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS

"Sec. 761. Purposes.
"Sec. 762. International negotiations.
"Sec. 763. Definitions.

"SUBPART 1—EMISSION ALLOWANCE REBATE PROGRAM

"Sec. 764. Eligible industrial sectors.
"Sec. 765. Distribution of emission allowance rebates.

"SUBPART 2—INTERNATIONAL RESERVE ALLOWANCE PROGRAM

"Sec. 766. International reserve allowance program.

"SUBPART 3—PRESIDENTIAL DETERMINATION

"Sec. 767. Presidential reports and determinations.

Subtitle B—Green Jobs and Worker Transition

PART 1—GREEN JOBS

Sec. 421. Clean energy curriculum development grants.
Sec. 422. Increased funding for energy worker training program.

PART 2—CLIMATE CHANGE WORKER ADJUSTMENT ASSISTANCE

Sec. 425. Petitions, eligibility requirements, and determinations.
Sec. 426. Program benefits.
Sec. 427. General provisions.

Subtitle C—Consumer Assistance

Sec. 431. Energy refund program.
Sec. 432. Modification of earned income credit amount for individuals with no qualifying children.
Sec. 433. Protection of Social Security and Medicare trust funds.

Subtitle D—Exporting Clean Technology

Sec. 441. Findings and purposes.
Sec. 442. Definitions.
Sec. 443. Governance.
Sec. 444. Determination of eligible countries.
Sec. 445. Qualifying activities.
Sec. 446. Assistance.

Subtitle E—Adapting to Climate Change

PART 1—DOMESTIC ADAPTATION

SUBPART A—NATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

Sec. 451. Global change research and data management.
Sec. 452. National Climate Service.
Sec. 453. State programs to build resilience to climate change impacts.

SUBPART B—PUBLIC HEALTH AND CLIMATE CHANGE

Sec. 461. Sense of Congress on public health and climate change.
Sec. 462. Relationship to other laws.
Sec. 463. National strategic action plan.
Sec. 464. Advisory board.
Sec. 465. Reports.
Sec. 466. Definitions.
Sec. 467. Climate Change Health Protection and Promotion Fund.

SUBPART C—NATURAL RESOURCE ADAPTATION

Sec. 471. Purposes.
Sec. 472. Natural resources climate change adaptation policy.
Sec. 473. Definitions.
Sec. 474. Council on Environmental Quality.
Sec. 475. Natural Resources Climate Change Adaptation Panel.
Sec. 476. Natural Resources Climate Change Adaptation Strategy.
Sec. 477. Natural resources adaptation science and information.
Sec. 478. Federal natural resource agency adaptation plans.
Sec. 479. State natural resources adaptation plans.
Sec. 480. Natural Resources Climate Change Adaptation Fund.

Sec. 481. National Wildlife Habitat and Corridors Information Program.
Sec. 482. Additional provisions regarding Indian tribes.

PART 2—INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

Sec. 491. Findings and purposes.
Sec. 492. Definitions.
Sec. 493. International Climate Change Adaptation Program.
Sec. 494. Distribution of allowances.
Sec. 495. Bilateral assistance.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) STATE.—The term ''State'' has the meaning given that term in section 302 of the Clean Air Act.

SEC. 3. INTERNATIONAL PARTICIPATION.

The Administrator, in consultation with the Department of State and the United States Trade Representative, shall annually prepare and certify a report to the Congress regarding whether China and India have adopted greenhouse gas emissions standards at least as strict as those standards required under this Act. If the Administrator determines that China and India have not adopted greenhouse gas emissions standards at least as stringent as those set forth in this Act, the Administrator shall notify each Member of Congress of his determination, and shall release his determination to the media.

TITLE I—CLEAN ENERGY

Subtitle A—Combined Efficiency and Renewable Electricity Standard

SEC. 101. COMBINED EFFICIENCY AND RENEWABLE ELECTRICITY STANDARD.

(a) IN GENERAL.—Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 and following) is amended by adding at the end the following:

"SEC. 610. COMBINED EFFICIENCY AND RENEWABLE ELECTRICITY STANDARD.

"(a) DEFINITIONS.—For purposes of this section:

"(1) CHP SAVINGS.—The term 'CHP savings' means—

"(A) CHP system savings from a combined heat and power system that commences operation after the date of enactment of this section; and

"(B) the increase in CHP system savings from, at any time after the date of the enactment of this section, upgrading, replacing, expanding, or increasing the utilization of a combined heat and power system that commenced operation on or before the date of enactment of this section.

"(2) CHP SYSTEM SAVINGS.—The term 'CHP system savings' means the increment of electric output of a combined heat and power system that is attributable to the higher efficiency of the combined system (as compared to the efficiency of separate production of the electric and thermal outputs).

"(3) COMBINED HEAT AND POWER SYSTEM.—The term 'combined heat and power system' means a system that uses the same energy source both for the generation of electrical or mechanical power and the production of steam or another form of useful thermal energy, provided that—

"(A) the system meets such requirements relating to efficiency and other operating characteristics as the Commission may promulgate by regulation; and

"(B) the net sales of electricity by the facility to customers not consuming the thermal output from that facility will not exceed 50 percent of total annual electric generation by the facility.

"(4) CUSTOMER FACILITY SAVINGS.—The term 'customer facility savings' means a reduction in end-use electricity consumption (including recycled energy savings) at a facility of an end-use consumer of

electricity served by a retail electric supplier, as compared to—

"(A) in the case of a new facility, consumption at a reference facility of average efficiency;

"(B) in the case of an existing facility, consumption at such facility during a base period, except as provided in subparagraphs (C) and (D);

"(C) in the case of new equipment that replaces existing equipment with remaining useful life, the projected consumption of the existing equipment for the remaining useful life of such equipment, and thereafter, consumption of new equipment of average efficiency of the same equipment type; and

"(D) in the case of new equipment that replaces existing equipment at the end of the useful life of the existing equipment, consumption by new equipment of average efficiency of the same equipment type.

"(5) DISTRIBUTED RENEWABLE GENERATION FACILITY.—The term 'distributed renewable generation facility' means a facility that—

"(A) generates renewable electricity;

"(B) primarily serves 1 or more electricity consumers at or near the facility site; and

"(C) is no greater than—

"(i) 2 megawatts in capacity; or

"(ii) 4 megawatts in capacity, in the case of a facility that is placed in service after the date of enactment of this section and generates electricity from a renewable energy resource other than by means of combustion.

"(6) ELECTRICITY SAVINGS.—The term 'electricity savings' means reductions in electricity consumption, relative to business-as-usual projections, achieved through measures implemented after the date of enactment of this section, limited to—

"(A) customer facility savings of electricity, adjusted to reflect any associated increase in fuel consumption at the facility;

"(B) reductions in distribution system losses of electricity achieved by a retail electricity distributor, as compared to losses attributable to new or replacement distribution system equipment of average efficiency;

"(C) CHP savings; and

"(D) fuel cell savings.

"(7) FEDERAL LAND.—The term 'Federal land' means land owned by the United States, other than land held in trust for an Indian or Indian tribe.

"(8) FEDERAL RENEWABLE ELECTRICITY CREDIT.—The term 'Federal renewable electricity credit' means a credit, representing one megawatt hour of renewable electricity, issued pursuant to subsection (e).

"(9) FUEL CELL.—The term 'fuel cell' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

"(10) FUEL CELL SAVINGS.—The term 'fuel cell savings' means the electricity saved by a fuel cell that is installed after the date of enactment of this section, or by upgrading a fuel cell that commenced operation on or before the date of enactment of this section, as a result of the greater efficiency with which the fuel cell transforms fuel into electricity as compared with sources of electricity delivered through the grid, provided that—

"(A) the fuel cell meets such requirements relating to efficiency and other operating char-

acteristics as the Commission may promulgate by regulation; and

"(B) the net sales of electricity from the fuel cell to customers not consuming the thermal output from the fuel cell, if any, do not exceed 50 percent of the total annual electricity generation by the fuel cell.

"(11) HIGH CONSERVATION PRIORITY LAND.—The term 'high conservation priority land' means land that is not Federal land and is—

"(A) globally or State ranked as critically imperiled or imperiled under a State Natural Heritage Program; or

"(B) old-growth or late-successional forest, as identified by the office of the relevant State Forester or relevant State agency with regulatory jurisdiction over forestry activities.

"(12) OTHER QUALIFYING ENERGY RESOURCE.—The term 'other qualifying energy resource' means any of the following:

"(A) Landfill gas.

"(B) Wastewater treatment gas.

"(C) Coal mine methane used to generate electricity at or near the mine mouth.

"(D) Qualified waste-to-energy.

"(13) QUALIFIED HYDROPOWER.—The term 'qualified hydropower' means—

"(A) energy produced from increased efficiency achieved, or additions of capacity made, on or after January 1, 1992, at a hydroelectric facility that was placed in service before that date and does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions; or

"(B) energy produced from generating capacity added to a dam on or after January 1, 1992, provided that the Commission certifies that—

"(i) the dam was placed in service before the date of the enactment of this section and was operated for flood control, navigation, or water supply purposes and was not producing hydroelectric power prior to the addition of such capacity;

"(ii) the hydroelectric project installed on the dam is licensed (or is exempt from licensing) by the Commission and is in compliance with the terms and conditions of the license or exemption, and with other

applicable legal requirements for the protection of environmental quality, including applicable fish passage requirements; and

"(iii) the hydroelectric project installed on the dam is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license or exemption requirements that require changes in water surface elevation for the purpose of improving the environmental quality of the affected waterway.

"(14) QUALIFIED WASTE-TO-ENERGY.—The term 'qualified waste-to-energy' means energy from the combustion of municipal solid waste or construction, demolition, or disaster debris, or from the gasification or pyrolization of such waste or debris and the combustion of the resulting gas at the same facility, provided that—

"(A) such term shall include only the energy derived from the non-fossil biogenic portion of such waste or debris;

"(B) the Commission determines, with the concurrence of the Administrator of the Envi-

ronmental Protection Agency, that the total lifecycle greenhouse gas emissions attributable to the generation of electricity from such waste or debris are lower than those attributable to the likely alternative method of disposing of such waste or debris; and

"(C) the owner or operator of the facility generating electricity from such energy provides to the Commission, on an annual basis—

"(i) a certification that the facility is in compliance with all applicable State, tribal, and Federal environmental permits;

"(ii) in the case of a facility that commenced operation before the date of enactment of this section, a certification that the facility meets emissions standards promulgated under sections 112 or 129 of the Clean Air Act (42 U.S.C. 7412 or 7429) that apply as of the date of enactment of this section to new facilities within the relevant source category; and

"(iii) in the case of the combustion, pyrolization, or gasification of municipal solid waste, a certification that each local government unit from which such waste

originates operates, participates in the operation of, contracts for, or otherwise provides for, recycling services for its residents.

"(15) RECYCLED ENERGY SAVINGS.—The term 'recycled energy savings' means a reduction in electricity consumption that results from a modification of an industrial or commercial system that commenced operation before the date of enactment of this section, in order to recapture electrical, mechanical, or thermal energy that would otherwise be wasted.

"(16) RENEWABLE BIOMASS.—The term 'renewable biomass' means any of the following:

"(A) Plant material, including waste material, harvested or collected from actively managed agricultural land that was in cultivation, cleared, or fallow and nonforested on January 1, 2009.

"(B) Plant material, including waste material, harvested or collected from pastureland that was nonforested on January 1, 2009.

"(C) Nonhazardous vegetative matter derived from waste, including separated yard waste, landscape right-of-way trimmings, con-

struction and demolition debris or food waste (but not municipal solid waste, recyclable waste paper, painted, treated or pressurized wood, or wood contaminated with plastic or metals).

"(D) Animal waste or animal byproducts, including products of animal waste digesters.

"(E) Algae.

"(F) Trees, brush, slash, residues, or any other vegetative matter removed from within 600 feet of any building, campground, or route designated for evacuation by a public official with responsibility for emergency preparedness, or from within 300 feet of a paved road, electric transmission line, utility tower, or water supply line.

"(G) Residues from or byproducts of milled logs.

"(H) Any of the following removed from forested land that is not Federal and is not high conservation priority land:

"(i) Trees, brush, slash, residues, interplanted energy crops, or any other vegetative matter removed from an actively managed tree plantation established—

"(I) prior to January 1, 2009; or

"(II) on land that, as of January 1, 2009, was cultivated or fallow and non-forested.

"(ii) Trees, logging residue, thinnings, cull trees, pulpwood, and brush removed from naturally-regenerated forests or other non-plantation forests, including for the purposes of hazardous fuel reduction or preventative treatment for reducing or containing insect or disease infestation.

"(iii) Logging residue, thinnings, cull trees, pulpwood, brush and species that are non-native and noxious, from stands that were planted and managed after January 1, 2009, to restore or maintain native forest types.

"(iv) Dead or severely damaged trees removed within 5 years of fire, blowdown, or other natural disaster, and badly infested trees.

"(I) Materials, pre-commercial thinnings, or removed invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)),

including those that are byproducts of preventive treatments (such as trees, wood, brush, thinnings, chips, and slash), that are removed as part of a federally recognized timber sale, or that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health, and that are—

"(i) not from components of the National Wilderness Preservation System, Wilderness Study Areas, Inventoried Roadless Areas, old growth or mature forest stands, components of the National Landscape Conservation System, National Monuments, National Conservation Areas, Designated Primitive Areas, or Wild and Scenic Rivers corridors;

"(ii) harvested in environmentally sustainable quantities, as determined by the appropriate Federal land manager; and

"(iii) harvested in accordance with Federal and State law and applicable land management plans.

"(17) RENEWABLE ELECTRICITY.—The term 'renewable electricity' means electricity generated

(including by means of a fuel cell) from a renewable energy resource or other qualifying energy resources.

"(18) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means each of the following:

"(A) Wind energy.

"(B) Solar energy.

"(C) Geothermal energy.

"(D) Renewable biomass.

"(E) Biogas derived exclusively from renewable biomass.

"(F) Biofuels derived exclusively from renewable biomass.

"(G) Qualified hydropower.

"(H) Marine and hydrokinetic renewable energy, as that term is defined in section 632 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17211).

"(19) RETAIL ELECTRIC SUPPLIER.—

"(A) IN GENERAL.—The term 'retail electric supplier' means, for any given year, an electric utility that sold not less than 4,000,000 megawatt hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year.

"(B) INCLUSIONS AND LIMITATIONS.—For purposes of determining whether an electric utility qualifies as a retail electric supplier under subparagraph (A)—

"(i) the sales of any affiliate of an electric utility to electric consumers, other than sales to the affiliate's lessees or tenants, for purposes other than resale shall be considered to be sales of such electric utility; and

"(ii) sales by any electric utility to an affiliate, lessee, or tenant of such electric utility shall not be treated as sales to electric consumers.

"(C) AFFILIATE.—For purposes of this paragraph, the term 'affiliate' when used in relation to a person, means another person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, such person, as determined under regulations promulgated by the Commission.

"(20) RETAIL ELECTRIC SUPPLIER'S BASE AMOUNT.—The term 'retail electric supplier's base amount' means the total amount of electric energy

sold by the retail electric supplier, expressed in megawatt hours, to electric customers for purposes other than resale during the relevant calendar year, excluding—

"(A) electricity generated by a hydroelectric facility that is not qualified hydropower;

"(B) electricity generated by a nuclear generating unit placed in service after the date of enactment of this section; and

"(C) the proportion of electricity generated by a fossil-fueled generating unit that is equal to the proportion of greenhouse gases produced by such unit that are captured and geologically sequestered.

"(21) RETIRE AND RETIREMENT.—The terms 'retire' and 'retirement' with respect to a Federal renewable electricity credit, means to disqualify such credit for any subsequent use under this section, regardless of whether the use is a sale, transfer, exchange, or submission in satisfaction of a compliance obligation.

"(22) THIRD-PARTY EFFICIENCY PROVIDER.—The term 'third-party efficiency provider' means any retailer, building owner, energy service company, financial institution or other commercial, industrial or

nonprofit entity that is capable of providing electricity savings in accordance with the requirements of this section.

"(23) TOTAL ANNUAL ELECTRICITY SAVINGS.—The term 'total annual electricity savings' means electricity savings during a specified calendar year from measures implemented since the date of the enactment of this section, taking into account verified measure lifetimes or verified annual savings attrition rates, as determined in accordance with such regulations as the Commission may promulgate and measured in megawatt hours.

"(b) ANNUAL COMPLIANCE OBLIGATION.—

"(1) IN GENERAL.—For each of calendar years 2012 through 2039, not later than March 31 of the following calendar year, each retail electric supplier shall submit to the Commission an amount of Federal renewable electricity credits and demonstrated total annual electricity savings that, in the aggregate, is equal to such retail electric supplier's annual combined target as set forth in subsection (d), except as otherwise provided in subsection (g).

"(2) DEMONSTRATION OF SAVINGS.—For purposes of this subsection, submission of demonstrated total annual electricity savings means submission of

a report that demonstrates, in accordance with the requirements of subsection (f), the total annual electricity savings achieved by the retail electric supplier within the relevant compliance year.

"(3) RENEWABLE ELECTRICITY CREDITS PORTION.—Except as provided in paragraph (4), each retail electric supplier must submit Federal renewable electricity credits equal to at least three quarters of the retail electric supplier's annual combined target.

"(4) STATE PETITION.—

"(A) IN GENERAL.—Upon written request from the Governor of any State (including, for purposes of this paragraph, the Mayor of the District of Columbia), the Commission shall increase, to not more than two fifths, the proportion of the annual combined targets of retail electric suppliers located within such State that may be met through submission of demonstrated total annual electricity savings, provided that such increase shall be effective only with regard to the portion of a retail electric supplier's annual combined target that is attributable to electricity sales within such State.

"(B) CONTENTS.—A Governor's request under this paragraph shall include an explanation of the Governor's rationale for determining, after consultation with the relevant State regulatory authority and other retail electricity ratemaking authorities within the State, to make such request. The request shall specify the maximum proportion of annual combined targets (not more than two fifths) that can be met through demonstrated total annual electricity savings, and the period for which such proportion shall be effective.

"(C) REVISION.—The Governor of any State may, after consultation with the relevant State regulatory authority and other retail electricity ratemaking authorities within the State, submit a written request for revocation or revision of a previous request submitted under this paragraph. The Commission shall grant such request, provided that—

"(i) any revocation or revision shall not apply to the combined annual target for any year that is any earlier than 2 calendar years after the calendar year in which such request is submitted, so as to

provide retail electric suppliers with adequate notice of such change; and

"(ii) any revision shall meet the requirements of subparagraph (A).

"(c) ESTABLISHMENT OF PROGRAM.—Not later than 1 year after the date of enactment of this section, the Commission shall promulgate regulations to implement and enforce the requirements of this section. In promulgating such regulations, the Commission shall, to the extent practicable—

"(1) preserve the integrity, and incorporate best practices, of existing State and tribal renewable electricity and energy efficiency programs;

"(2) rely upon existing and emerging State, tribal, or regional tracking systems that issue and track non-Federal renewable electricity credits; and

"(3) cooperate with the States and Indian tribes to facilitate coordination between State, tribal, and Federal renewable electricity and energy efficiency programs and to minimize administrative burdens and costs to retail electric suppliers.

"(d) ANNUAL COMPLIANCE REQUIREMENT.—

"(1) ANNUAL COMBINED TARGETS.—For each of calendar years 2012 through 2039, a retail elec-

tric supplier's annual combined target shall be the product of—

"(A) the required annual percentage for such year, as set forth in paragraph (2); and

"(B) the retail electric supplier's base amount for such year.

"(2) REQUIRED ANNUAL PERCENTAGE.—For each of calendar years 2012 through 2039, the required annual percentage shall be as follows:

"Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	9.5
2015	9.5
2016	13.0
2017	13.0
2018	16.5
2019	16.5
2020	20.0
2021 through 2039	20.0

"(e) FEDERAL RENEWABLE ELECTRICITY CREDITS.—

"(1) IN GENERAL.—The regulations promulgated under this section shall include provisions governing the issuance, tracking, and verification of Federal renewable electricity credits. Except as provided in paragraphs (2), (3), and (4) of this subsection, the Commission shall issue to each generator of renewable electricity, 1 Federal renewable electricity credit for each megawatt hour of renew-

able electricity generated by such generator after December 31, 2011. The Commission shall assign a unique serial number to each Federal renewable electricity credit.

"(2) GENERATION FROM CERTAIN STATE RENEWABLE ELECTRICITY PROGRAMS.—Where renewable electricity is generated with the support of payments from a retail electric supplier pursuant to a State renewable electricity program (whether through State alternative compliance payments or through payments to a State renewable electricity procurement fund or entity), the Commission shall issue Federal renewable electricity credits to such retail electric supplier for the proportion of the relevant renewable electricity generation that is attributable to the retail electric supplier's payments, as determined pursuant to regulations issued by the Commission. For any remaining portion of the relevant renewable electricity generation, the Commission shall issue Federal renewable electricity credits to the generator, as provided in paragraph (1), except that in no event shall more than 1 Federal renewable electricity credit be issued for the same megawatt hour of electricity. In determining how Federal renewable electricity credits will be appor-

tioned among retail electric suppliers and generators in such circumstances, the Commission shall consider information and guidance furnished by the relevant State or States.

"(3) CERTAIN POWER SALES CONTRACTS.—When a generator has sold renewable electricity to a retail electric supplier under a contract for power from a facility placed in service before the date of enactment of this section, and the contract does not provide for the determination of ownership of the Federal renewable electricity credits associated with such generation, the Commission shall issue such Federal renewable electricity credits to the retail electric supplier for the duration of the contract.

"(4) CREDIT MULTIPLIER FOR DISTRIBUTED RENEWABLE GENERATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission shall issue 3 Federal renewable electricity credits for each megawatt hour of renewable electricity generated by a distributed renewable generation facility.

"(B) ADJUSTMENT.—Except as provided in subparagraph (C), not later than January 1, 2014, and not less frequently than every 4

years thereafter, the Commission shall review the effect of this paragraph and shall, as necessary, reduce the number of Federal renewable electricity credits per megawatt hour issued under this paragraph for any given energy source or technology, but not below 1, to ensure that such number is no higher than the Commission determines is necessary to make distributed renewable generation facilities using such source or technology cost competitive with other sources of renewable electricity generation.

"(C) FACILITIES PLACED IN SERVICE AFTER ENACTMENT.—For any distributed renewable generation facility placed in service after the date of enactment of this section, subparagraph (B) shall not apply for the first 10 years after the date on which the facility is placed in service. For each year during such 10-year period, the Commission shall issue to the facility the same number of Federal renewable electricity credits per megawatt hour as are issued to that facility in the year in which such facility is placed in service. After such 10-year period, the Commission shall issue Federal re-

newable electricity credits to the facility in accordance with the current multiplier as determined pursuant to subparagraph (B).

"(5) CREDITS BASED ON QUALIFIED HYDROPOWER.—For purposes of this subsection, the number of Federal renewable electricity credits issued for qualified hydropower shall be calculated—

"(A) based solely on the increase in average annual generation directly resulting from the efficiency improvements or capacity additions described in subsection (a)(13)(A); and

"(B) using the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility, as certified by the Commission.

"(6) GENERATION FROM QUALIFIED WASTE-TO-ENERGY.—In the case of electricity generated from the combustion of any municipal solid waste or construction, demolition, or disaster debris that is included in the definition of renewable biomass, or from the gasification or pyrolization of such waste or debris and the combustion of the resulting gas at the same facility, the Commission shall issue Federal renewable electricity credits only for electricity generated from qualified waste-to-energy.

"(7) GENERATION FROM MIXED RENEWABLE AND NONRENEWABLE RESOURCES.—If electricity is generated using both a renewable energy resource or other qualifying energy resource and an energy source that is not a renewable energy resource or other qualifying energy resource (as, for example, in the case of co-firing of renewable biomass and fossil fuel), the Commission shall issue Federal renewable electricity credits based on the proportion of the electricity that is attributable to the renewable energy resource or other qualifying energy resource.

"(8) PROHIBITION AGAINST DOUBLE-COUNTING.—Except as provided in paragraph (4) of this subsection, the Commission shall ensure that no more than 1 Federal renewable electricity credit will be issued for any megawatt hour of renewable electricity and that no Federal renewable electricity credit will be used more than once for compliance with this section.

"(9) TRADING.—The lawful holder of a Federal renewable electricity credit may sell, exchange, transfer, submit for compliance in accordance with subsection (b), or submit such credit for retirement by the Commission.

"(10) BANKING.—A Federal renewable electricity credit may be submitted in satisfaction of the compliance obligation set forth in subsection (b) for the compliance year in which the credit was issued or for any of the 3 immediately subsequent compliance years. The Commission shall retire any Federal renewable electricity credit that has not been retired by April 2 of the calendar year that is 3 years after the calendar year in which the credit was issued.

"(11) RETIREMENT.—The Commission shall retire a Federal renewable electricity credit immediately upon submission by the lawful holder of such credit, whether in satisfaction of a compliance obligation under subsection (b) or on some other basis.

"(f) ELECTRICITY SAVINGS.—

"(1) STANDARDS FOR MEASUREMENT OF SAVINGS.—As part of the regulations promulgated under this section, the Commission shall prescribe standards and protocols for defining and measuring electricity savings and total annual electricity savings that can be counted towards the compliance obligation set forth in subsection (b). Such protocols and standards shall, at minimum—

"(A) specify the types of energy efficiency and energy conservation measures that can be counted;

"(B) require that energy consumption estimates for customer facilities or portions of facilities in the applicable base and current years be adjusted, as appropriate, to account for changes in weather, level of production, and building area;

"(C) account for the useful life of measures;

"(D) include deemed savings values for specific, commonly used measures;

"(E) allow for savings from a program to be estimated based on extrapolation from a representative sample of participating customers;

"(F) include procedures for counting CHP savings, recycled energy savings, and fuel cell savings;

"(G) include procedures for documenting measurable and verifiable electricity savings achieved as a result of market transformation efforts;

"(H) include procedures for counting electricity savings achieved by solar water heating

and solar light pipe technology that has the capability to provide measurable data on the amount of megawatt-hours displaced;

"(I) avoid double-counting of savings used for compliance with this section, including savings that are transferred pursuant to paragraph (3);

"(J) ensure that, except as provided in subparagraph (L), the retail electric supplier claiming the savings played a significant role in achieving the savings (including through the activities of a designated agent of the supplier or through the purchase of transferred savings);

"(K) include savings from programs administered by a retail electric supplier (or a retail electricity distributor that is not a retail electric supplier) that are funded by State, Federal, or other sources;

"(L) in any State in which the State regulatory authority has designated 1 or more entities to administer electric ratepayer-funded efficiency programs approved by such State regulatory authority, provide that electricity savings achieved through such programs shall be distributed equitably among retail electric sup-

pliers in accordance with the direction of the relevant State regulatory authority; and

"(M) exclude savings achieved as a result of compliance with mandatory appliance and equipment efficiency standards or building codes.

"(2) STANDARDS FOR THIRD-PARTY VERIFICATION OF SAVINGS.—The regulations promulgated under this section shall establish procedures and standards requiring third-party verification of all reported electricity savings, including requirements for accreditation of third-party verifiers to ensure that such verifiers are professionally qualified and have no conflicts of interest.

"(3) TRANSFERS OF SAVINGS.—

"(A) BILATERAL CONTRACTS FOR SAVINGS TRANSFERS.—Subject to the limitations of this paragraph, a retail electric supplier may use electricity savings transferred, pursuant to a bilateral contract, from another retail electric supplier, an owner of an electric distribution facility that is not a retail electric supplier, a State, or a third-party efficiency provider to meet the applicable compliance obligation under subsection (b).

"(B) REQUIREMENTS.—Electricity savings transferred and used for compliance pursuant to this paragraph shall be—

"(i) measured and verified in accordance with the procedures specified under this subsection;

"(ii) reported in accordance with paragraph (4) of this subsection; and

"(iii) achieved within the same State as is served by the retail electric supplier.

"(C) REGULATORY APPROVAL.—Nothing in this paragraph shall limit or affect the authority of a State regulatory authority to require a retail electric supplier that is regulated by such authority to obtain such authority's authorization or approval of a contract for transfer of savings under this paragraph.

"(4) REPORTING SAVINGS.—

"(A) REQUIREMENTS.—The regulations promulgated under this section shall establish requirements governing the submission of reports to demonstrate, in accordance with the protocols and standards for measurement and third-party verification established under this subsection, the total annual electricity savings

achieved by a retail electric supplier within the relevant year.

"(B) REVIEW AND APPROVAL.—The Commission shall review each report submitted to the Commission by a retail electric supplier and shall exclude any electricity savings that have not been adequately demonstrated in accordance with the requirements of this subsection.

"(5) STATE ADMINISTRATION.—

"(A) DELEGATION OF AUTHORITY.—Upon receipt of an application from the Governor of a State (including, for purposes of this subsection, the Mayor of the District of Columbia), the Commission may delegate to the State the authority to review and verify reported electricity savings for purposes of determining demonstrated total annual electricity savings that may be counted towards a retail electric supplier's compliance obligation under subsection (b). The Commission shall make a substantive determination approving or disapproving a State application under this subparagraph, after notice and comment, within 180 days of receipt of a complete application.

"(B) ALTERNATIVE MEASUREMENT AND VERIFICATION PROCEDURES AND STANDARDS.—As part of an application submitted under subparagraph (A), a State may request to use alternative measurement and verification procedures and standards to those specified in paragraphs (1) and (2), provided the State demonstrates that such alternative procedures and standards provide a level of accuracy of measurement and verification at least equivalent to the Federal procedures and standards promulgated under paragraphs (1) and (2).

"(C) REVIEW OF STATE IMPLEMENTATION.—The Commission shall, not less frequently than once every 4 years, review each State's implementation of delegated authority under this paragraph to ensure conformance with the requirements of this section. The Commission may, at any time, revoke the delegation of authority under this section upon a finding that the State is not implementing its delegated responsibilities in conformity with this paragraph. As a condition of maintaining its delegated authority under this paragraph, the Commission may require a State to submit a revised

application under subparagraph (A) if the Commission has—

"(i) promulgated new or substantially revised measurement and verification procedures and standards under this subsection; or

"(ii) otherwise substantially revised the program established under this section.

"(g) ALTERNATIVE COMPLIANCE PAYMENTS.—

"(1) IN GENERAL.—A retail electric supplier may satisfy the requirements of subsection (b) in whole or in part by submitting in accordance with this subsection, in lieu of each Federal renewable electricity credit or megawatt hour of demonstrated total annual electricity savings that would otherwise be due, a payment equal to $25, adjusted for inflation on January 1 of each year following calendar year 2009, in accordance with such regulations as the Commission may promulgate.

"(2) PAYMENT TO STATE FUNDS.—Except as otherwise provided in this paragraph, payments made under this subsection shall be made directly to the State or States in which the retail electric supplier is located, in proportion to the portion of the retail electric supplier's base amount that is sold

within each relevant State, provided that such payments are deposited directly into a fund in the State treasury established for this purpose and that the State uses such funds in accordance with paragraphs (3) and (4). If the Commission determines at any time that a State is in substantial noncompliance with paragraph (3) or (4), the Commission shall direct that any future alternative compliance payments that would otherwise be paid to such State under this subsection shall instead be paid to the Commission and deposited in the United States Treasury.

"(3) STATE USE OF FUNDS.—As a condition of continued receipt of alternative compliance payments pursuant to this subsection, a State shall use such payments exclusively for the purposes of—

"(A) deploying technologies that generate electricity from renewable energy resources; or

"(B) implementing cost-effective energy efficiency programs to achieve electricity savings.

"(4) REPORTING.—As a condition of continued receipt of alternative compliance payments pursuant to this subsection, a State shall, within 12 months of receipt of any such payments and at 12-month intervals thereafter until such payments are expended,

provide a report to the Commission, in accordance with such regulations as the Commission may prescribe, giving a full accounting of the use of such payments, including a detailed description of the activities funded thereby.

"(h) INFORMATION COLLECTION.—The Commission may require any retail electric supplier, renewable electricity generator, or such other entities as the Commission deems appropriate, to provide any information the Commission determines appropriate to carry out this section. Failure to submit such information or submission of false or misleading information under this subsection shall be a violation of this section.

"(i) ENFORCEMENT AND JUDICIAL REVIEW.—

"(1) FAILURE TO SUBMIT CREDITS OR DEMONSTRATE SAVINGS.—If any person fails to comply with the requirements of subsection (b) or (g), such person shall be liable to pay to the Commission a civil penalty equal to the product of—

"(A) double the alternative compliance payment calculated under subsection (g)(1), and

"(B) the aggregate quantity of Federal renewable electricity credits, total annual electricity savings, or equivalent alternative compli-

ance payments that the person failed to submit in violation of the requirements of subsections (b) and (g).

"(2) ENFORCEMENT.—The Commission shall assess a civil penalty under paragraph (1) in accordance with the procedures described in section 31(d) of the Federal Power Act (16 U.S.C. 823b(d)).

"(3) VIOLATION OF REQUIREMENT OF REGULATIONS OR ORDERS.—Any person who violates, or fails or refuses to comply with, any requirement of a regulation promulgated or order issued under this section shall be subject to a civil penalty under section 316A(b) of the Federal Power Act (16 U.S.C. 825o–1). Such penalty shall be assessed by the Commission in the same manner as in the case of a violation referred to in section 316A(b) of such Act.

"(j) JUDICIAL REVIEW.—Any person aggrieved by a final action taken by the Commission under this section, other than the assessment of a civil penalty under subsection (i), may use the procedures for review described in section 313 of the Federal Power Act (16 U.S.C. 825l). For purposes of this paragraph, references to an order in section 313 of such Act shall be deemed to refer also to all other final actions of the Commission under this section

other than the assessment of a civil penalty under subsection (i).

"(k) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) diminish or qualify any authority of a State, a political subdivision of a State, or an Indian tribe to—

"(A) adopt or enforce any law or regulation respecting renewable electricity or energy efficiency, including any law or regulation establishing requirements more stringent than those established by this section, provided that no such law or regulation may relieve any person of any requirement otherwise applicable under this section; or

"(B) regulate the acquisition and disposition of Federal renewable electricity credits by retail electric suppliers within the jurisdiction of such State, political subdivision, or Indian tribe, including the authority to require such retail electric supplier to acquire and submit to the Secretary for retirement Federal renewable electricity credits in excess of those submitted under this section; or

"(2) affect the application of, or the responsibility for compliance with, any other provision of law or regulation, including environmental and licensing requirements.

"(l) SUNSET.—This section expires on December 31, 2040.".

(b) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 and following) is amended by inserting after the item relating to section 609 the following:

"Sec. 610. Combined efficiency and renewable electricity standard.".

SEC. 102. CLARIFYING STATE AUTHORITY TO ADOPT RENEWABLE ENERGY INCENTIVES.

Section 210 of the Public Utility Regulatory Policies Act of 1978 is amended by adding at the end thereof:

"(o) CLARIFICATION OF STATE AUTHORITY TO ADOPT RENEWABLE ENERGY INCENTIVES.—Notwithstanding any other provision of this Act or the Federal Power Act, a State legislature or regulatory authority may set the rates for a sale of electric energy by a facility generating electric energy from renewable energy sources pursuant to a State-approved production incentive program under which the facility voluntarily sells electric energy. For purposes of this subsection, 'State-approved production incentive program' means a requirement imposed pur-

suant to State law, or by a State regulatory authority acting within its authority under State law, that an electric utility purchase renewable energy (as defined in section 609 of this Act) at a specified rate.''.

Subtitle B—Carbon Capture and Sequestration

SEC. 111. NATIONAL STRATEGY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Energy, the Secretary of the Interior, and the heads of such other relevant Federal agencies as the President may designate, shall submit to Congress a report setting forth a unified and comprehensive strategy to address the key legal, regulatory and other barriers to the commercial-scale deployment of carbon capture and sequestration.

(b) BARRIERS.— The report under this section shall—

(1) identify those regulatory, legal, and other gaps and barriers that could be addressed by a Federal agency using existing statutory authority, those, if any, that require Federal legislation, and those that would be best addressed at the State, tribal, or regional level;

(2) identify regulatory implementation challenges, including those related to approval of State and tribal programs and delegation of authority for permitting; and

(3) recommend rulemakings, Federal legislation, or other actions that should be taken to further evaluate and address such barriers.

SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION SITES.

(a) COORDINATED CERTIFICATION AND PERMITTING PROCESS.—Title VIII of the Clean Air Act, as added by section 331 of this Act, is amended by adding after section 812 (as added by section 116 of this Act) the following:

"SEC. 813. GEOLOGIC SEQUESTRATION SITES.

''(a) COORDINATED PROCESS.—The Administrator shall establish a coordinated approach to certifying and permitting geologic sequestration, taking into consideration all relevant statutory authorities. In establishing such approach, the Administrator shall—

''(1) take into account, and reduce redundancy with, the requirements of section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h), as amended by section 112(b) of the American Clean Energy and Security Act of 2009, including the rulemaking for

geologic sequestration wells described at 73 Fed. Reg. 43491-541 (July 25, 2008); and

"(2) to the extent practicable, reduce the burden on certified entities and implementing authorities.

"(b) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations to protect human health and the environment by minimizing the risk of escape to the atmosphere of carbon dioxide injected for purposes of geologic sequestration.

"(c) REQUIREMENTS.—The regulations under subsection (b) shall include—

"(1) a process to obtain certification for geologic sequestration under this section; and

"(2) requirements for—

"(A) monitoring, record keeping, and reporting for emissions associated with injection into, and escape from, geologic sequestration sites, taking into account any requirements or protocols developed under section 713;

"(B) public participation in the certification process that maximizes transparency;

"(C) the sharing of data between States, Indian tribes, and the Environmental Protection Agency; and

"(D) other elements or safeguards necessary to achieve the purpose set forth in subsection (b).

"(d) REPORT.—Not later than 2 years after the promulgation of regulations under subsection (b), and at 3-year intervals thereafter, the Administrator shall deliver to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on geologic sequestration in the United States, and, to the extent relevant, other countries in North America. Such report shall include—

"(1) data regarding injection, emissions to the atmosphere, if any, and performance of active and closed geologic sequestration sites, including those where enhanced hydrocarbon recovery operations occur;

"(2) an evaluation of the performance of relevant Federal environmental regulations and programs in ensuring environmentally protective geologic sequestration practices;

"(3) recommendations on how such programs and regulations should be improved or made more effective; and

"(4) other relevant information.".

(b) SAFE DRINKING WATER ACT STANDARDS.—Section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h) is amended by inserting after subsection (d) the following:

"(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION WELLS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall promulgate regulations under subsection (a) for carbon dioxide geologic sequestration wells.

"(2) FINANCIAL RESPONSIBILITY.—The regulations referred to in paragraph (1) shall include requirements for maintaining evidence of financial responsibility, including financial responsibility for emergency and remedial response, well plugging, site closure, and post-injection site care. Financial responsibility may be established for carbon dioxide geologic sequestration wells in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance,

guarantee, trust, standby trust, surety bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the Administrator.''.

SEC. 113. STUDIES AND REPORTS.

(a) STUDY OF LEGAL FRAMEWORK FOR GEOLOGIC SEQUESTRATION SITES.—

(1) ESTABLISHMENT OF TASK FORCE.—As soon as practicable, but not later than 6 months after the date of enactment of this Act, the Administrator shall establish a task force to be composed of an equal number of subject matter experts, nongovernmental organizations with expertise in environmental policy, academic experts with expertise in environmental law, State and tribal officials with environmental expertise, representatives of State and tribal Attorneys General, representatives from the Environmental Protection Agency, the Department of the Interior, the Department of Energy, the Department of Transportation, and other relevant Federal agencies, and members of the private sector, to conduct a study of—

(A) existing Federal environmental statutes, State environmental statutes, and State common law that apply to geologic sequestration sites for carbon dioxide, including the abil-

ity of such laws to serve as risk management tools;

(B) the existing statutory framework, including Federal and State laws, that apply to harm and damage to the environment or public health at closed sites where carbon dioxide injection has been used for enhanced hydrocarbon recovery;

(C) the statutory framework, environmental health and safety considerations, implementation issues, and financial implications of potential models for Federal, State, or private sector assumption of liabilities and financial responsibilities with respect to closed geologic sequestration sites;

(D) private sector mechanisms, including insurance and bonding, that may be available to manage environmental, health and safety risk from closed geologic sequestration sites; and

(E) the subsurface mineral rights, water rights, or property rights issues associated with geologic sequestration of carbon dioxide, including issues specific to Federal lands.

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the task force es-

tablished under paragraph (1) shall submit to Congress a report describing the results of the study conducted under that paragraph including any consensus recommendations of the task force.

(b) ENVIRONMENTAL STATUTES.—

(1) STUDY.—The Administrator shall conduct a study examining how, and under what circumstances, the environmental statutes for which the Environmental Protection Agency has responsibility would apply to carbon dioxide injection and geologic sequestration activities.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to Congress a report describing the results of the study conducted under paragraph (1).

SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEMONSTRATION AND EARLY DEPLOYMENT PROGRAM.

(a) DEFINITIONS.—For purposes of this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) DISTRIBUTION UTILITY.—The term ''distribution utility'' means an entity that distributes electricity directly to retail consumers under a legal, regulatory, or contractual obligation to do so.

(3) ELECTRIC UTILITY.—The term ''electric utility'' has the meaning provided by section 3(22) of the Federal Power Act (16 U.S.C. 796(22)).

(4) FOSSIL FUEL-BASED ELECTRICITY.—The term ''fossil fuel-based electricity'' means electricity that is produced from the combustion of fossil fuels.

(5) FOSSIL FUEL.—The term ''fossil fuel'' means coal, petroleum, natural gas or any derivative of coal, petroleum, or natural gas.

(6) CORPORATION.—The term ''Corporation'' means the Carbon Storage Research Corporation established in accordance with this section.

(7) QUALIFIED INDUSTRY ORGANIZATION.—The term ''qualified industry organization'' means the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, a successor organization of such organizations, or a group of owners or operators of distribution utilities delivering fossil fuel-based electricity who collectively represent at least 20 percent of the volume of fossil fuel-based electricity delivered by distribution utilities to consumers in the United States.

(8) RETAIL CONSUMER.—The term ''retail consumer'' means an end-user of electricity.

(b) CARBON STORAGE RESEARCH CORPORATION.—

(1) ESTABLISHMENT.—

(A) REFERENDUM.—Qualified industry organizations may conduct, at their own expense, a referendum among the owners or operators of distribution utilities delivering fossil fuel-based electricity for the creation of a Carbon Storage Research Corporation. Such referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations. Voting rights in such referendum shall be based on the quantity of fossil fuel-based electricity delivered to consumers in the previous calendar year or other representative period as determined by the Secretary pursuant to subsection (f). Upon approval of those persons representing two-thirds of the total quantity of fossil fuel-based electricity delivered to retail consumers, the Corporation shall be established unless opposed by the State regulatory authorities pursuant to subparagraph (B). All distribution utilities voting in the referendum shall certify to the independent auditing firm the quantity of fossil fuel-based electricity represented by their vote.

(B) STATE REGULATORY AUTHORITIES.—Upon its own motion or the petition of a qualified industry organization, each State regulatory authority shall consider its support or opposition to the creation of the Corporation under subparagraph (A). State regulatory authorities may notify the independent auditing firm referred to in subparagraph (A) of their views on the creation of the Corporation within 180 days after the date of enactment of this Act. If 40 percent or more of the State regulatory authorities submit to the independent auditing firm written notices of opposition, the Corporation shall not be established notwithstanding the approval of the qualified industry organizations as provided in subparagraph (A).

(2) TERMINATION.—The Corporation shall be authorized to collect assessments and conduct operations pursuant to this section for a 10-year period from the date 6 months after the date of enactment of this Act. After such 10-year period, the Corporation is no longer authorized to collect assessments and shall be dissolved on the date 15 years after such date of enactment, unless the period is extended by an Act of Congress.

(3) GOVERNANCE.—The Corporation shall operate as a division or affiliate of the Electric Power Research Institute (referred to in this section as ''EPRI'') and be managed by a Board of not more than 15 voting members responsible for its operations, including compliance with this section. EPRI, in consultation with the Edison Electric Institute, the American Public Power Association and the National Rural Electric Cooperative Association shall appoint the Board members under clauses (i), (ii), and (iii) of subparagraph (A) from among candidates recommended by those organizations. At least a majority of the Board members appointed by EPRI shall be representatives of distribution utilities subject to assessments under subsection (d).

(A) MEMBERS.—The Board shall include at least one representative of each of the following:

(i) Investor-owned utilities.

(ii) Utilities owned by a State agency, a municipality, and an Indian tribe.

(iii) Rural electric cooperatives.

(iv) Fossil fuel producers.

(v) Nonprofit environmental organizations.

(vi) Independent generators or wholesale power providers.

(vii) Consumer groups.

(B) NONVOTING MEMBERS.—The Board shall also include as additional nonvoting Members the Secretary of Energy or his designee and 2 representatives of State regulatory authorities as defined in section 3(17) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(17)), each designated by the National Association of State Regulatory Utility Commissioners from States that are not within the same transmission interconnection.

(4) COMPENSATION.—Corporation Board members shall receive no compensation for their services, nor shall Corporation Board members be reimbursed for expenses relating to their service.

(5) TERMS.—Corporation Board members shall serve terms of 4 years and may serve not more than 2 full consecutive terms. Members filling unexpired terms may serve not more than a total of 8 consecutive years. Former members of the Corporation Board may be reappointed to the Corporation Board if they have not been members for a period of 2 years. Initial appointments to the Corporation Board

shall be for terms of 1, 2, 3, and 4 years, staggered to provide for the selection of 3 members each year.

(6) STATUS OF CORPORATION.—The Corporation shall not be considered to be an agency, department, or instrumentality of the United States, and no officer or director or employee of the Corporation shall be considered to be an officer or employee of the United States Government, for purposes of title 5 or title 31 of the United States Code, or for any other purpose, and no funds of the Corporation shall be treated as public money for purposes of chapter 33 of title 31, United States Code, or for any other purpose.

(c) FUNCTIONS AND ADMINISTRATION OF THE CORPORATION.—

(1) IN GENERAL.—The Corporation shall establish and administer a program to accelerate the commercial availability of carbon dioxide capture and storage technologies and methods, including technologies which capture and store, or capture and convert, carbon dioxide. Under such program competitively awarded grants, contracts, and financial assistance shall be provided and entered into with eligible entities. Except as provided in paragraph (8), the Corporation shall use all funds derived from as-

sessments under subsection (d) to issue grants and contracts to eligible entities.

(2) PURPOSE.—The purposes of the grants, contracts, and assistance under this subsection shall be to support commercial-scale demonstrations of carbon capture or storage technology projects capable of advancing the technologies to commercial readiness. Such projects should encompass a range of different coal and other fossil fuel varieties, be geographically diverse, involve diverse storage media, and employ capture or storage, or capture and conversion, technologies potentially suitable either for new or for retrofit applications. The Corporation shall seek, to the extent feasible, to support at least 5 commercial-scale demonstration projects integrating carbon capture and sequestration or conversion technologies.

(3) ELIGIBLE ENTITIES.—Entities eligible for grants, contracts or assistance under this subsection may include distribution utilities, electric utilities and other private entities, academic institutions, national laboratories, Federal research agencies, State and tribal research agencies, nonprofit organizations, or consortiums of 2 or more entities. Pilot-scale and similar small-scale projects are not eligible for sup-

port by the Corporation. Owners or developers of projects supported by the Corporation shall, where appropriate, share in the costs of such projects.

(4) GRANTS FOR EARLY MOVERS.—Fifty percent of the funds raised under this section shall be provided in the form of grants to electric utilities that had, prior to the award of any grant under this section, committed resources to deploy a large scale electricity generation unit with integrated carbon capture and sequestration or conversion applied to a substantial portion of the unit's carbon dioxide emissions. Grant funds shall be provided to defray costs incurred by such electricity utilities for at least 5 such electricity generation units.

(5) ADMINISTRATION.—The members of the Board of Directors of the Corporation shall elect a Chairman and other officers as necessary, may establish committees and subcommittees of the Corporation, and shall adopt rules and bylaws for the conduct of business and the implementation of this section. The Board shall appoint an Executive Director and professional support staff who may be employees of the Electric Power Research Institute (EPRI). After consultation with the Technical Advisory Committee established under subsection (j), the

Secretary, and the Director of the National Energy Technology Laboratory to obtain advice and recommendations on plans, programs, and project selection criteria, the Board shall establish priorities for grants, contracts, and assistance; publish requests for proposals for grants, contracts, and assistance; and award grants, contracts, and assistance competitively, on the basis of merit, after the establishment of procedures that provide for scientific peer review by the Technical Advisory Committee. The Board shall give preference to applications that reflect the best overall value and prospect for achieving the purposes of the section, such as those which demonstrate an integrated approach for capture and storage or capture and conversion technologies. The Board members shall not participate in making grants or awards to entities with whom they are affiliated.

(6) USES OF GRANTS, CONTRACTS, AND ASSISTANCE.—A grant, contract, or other assistance provided under this subsection may be used to purchase carbon dioxide when needed to conduct tests of carbon dioxide storage sites, in the case of established projects that are storing carbon dioxide emissions, or for other purposes consistent with the purposes of

this section. The Corporation shall make publicly available at no cost information learned as a result of projects which it supports financially.

(7) INTELLECTUAL PROPERTY.—The Board shall establish policies regarding the ownership of intellectual property developed as a result of Corporation grants and other forms of technology support. Such policies shall encourage individual ingenuity and invention.

(8) ADMINISTRATIVE EXPENSES.—Up to 5 percent of the funds collected in any fiscal year under subsection (d) may be used for the administrative expenses of operating the Corporation (not including costs incurred in the determination and collection of the assessments pursuant to subsection (d)).

(9) PROGRAMS AND BUDGET.—Before August 1 each year, the Corporation, after consulting with the Technical Advisory Committee and the Secretary and the Director of the Department's National Energy Technology Laboratory and other interested parties to obtain advice and recommendations, shall publish for public review and comment its proposed plans, programs, project selection criteria, and projects to be funded by the Corporation for the next calendar year. The Corporation shall also pub-

lish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. The Secretary may recommend programs and activities the Secretary considers appropriate. The Corporation shall include in the first publication it issues under this paragraph a strategic plan or roadmap for the achievement of the purposes of the Corporation, as set forth in paragraph (2).

(10) RECORDS; AUDITS.—The Corporation shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Corporation and make public such information. The books of the Corporation shall be audited by a certified public accountant at least once each fiscal year and at such other times as the Corporation may designate. Copies of each audit shall be provided to the Congress, all Corporation board members, all qualified industry organizations, each State regulatory authority and, upon request, to other members of the industry. If the audit determines that the Corporation's practices fail to meet generally accepted accounting principles the assessment collection authority of the Corporation under subsection (d) shall be suspended

until a certified public accountant renders a subsequent opinion that the failure has been corrected. The Corporation shall make its books and records available for review by the Secretary or the Comptroller General of the United States.

(11) PUBLIC ACCESS.—The Corporation Board's meetings shall be open to the public and shall occur after at least 30 days advance public notice. Meetings of the Board of Directors may be closed to the public where the agenda of such meetings includes only confidential matters pertaining to project selection, the award of grants or contracts, personnel matters, or the receipt of legal advice. The minutes of all meetings of the Corporation shall be made available to and readily accessible by the public.

(12) ANNUAL REPORT.—Each year the Corporation shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Corporation during the previous year. The report shall also detail the allocation or planned allocation of Corporation resources for each such program and project. The Corporation shall provide its annual report to the Congress, the Secretary, each State regu-

latory authority, and upon request to the public. The Secretary shall, not less than 60 days after receiving such report, provide to the President and Congress a report assessing the progress of the Corporation in meeting the objectives of this section.

(d) ASSESSMENTS.—

(1) AMOUNT.—(A) In all calendar years following its establishment, the Corporation shall collect an assessment on distribution utilities for all fossil fuel-based electricity delivered directly to retail consumers (as determined under subsection (f)). The assessments shall reflect the relative carbon dioxide emission rates of different fossil fuel-based electricity, and initially shall be not less than the following amounts for coal, natural gas, and oil:

Fuel type	**Rate of assessment per kilowatt hour**
Coal	$0.00043
Natural Gas	$0.00022
Oil	$0.00032.

(B) The Corporation is authorized to adjust the assessments on fossil fuel-based electricity to reflect changes in the expected quantities of such electricity from different fuel types, such that the assessments generate not less than $1.0 billion and not more than $1.1 billion annually. The Corporation is au-

1 thorized to supplement assessments through addi-
2 tional financial commitments.

3 (2) INVESTMENT OF FUNDS.—Pending dis-
4 bursement pursuant to a program, plan, or project,
5 the Corporation may invest funds collected through
6 assessments under this subsection, and any other
7 funds received by the Corporation, only in obliga-
8 tions of the United States or any agency thereof, in
9 general obligations of any State or any political sub-
10 division thereof, in any interest-bearing account or
11 certificate of deposit of a bank that is a member of
12 the Federal Reserve System, or in obligations fully
13 guaranteed as to principal and interest by the
14 United States.

15 (3) REVERSION OF UNUSED FUNDS.—If the
16 Corporation does not disburse, dedicate or assign 75
17 percent or more of the available proceeds of the as-
18 sessed fees in any calendar year 7 or more years fol-
19 lowing its establishment, due to an absence of quali-
20 fied projects or similar circumstances, it shall reim-
21 burse the remaining undedicated or unassigned bal-
22 ance of such fees, less administrative and other ex-
23 penses authorized by this section, to the distribution
24 utilities upon which such fees were assessed, in pro-
25 portion to their collected assessments.

(e) ERCOT.—

(1) ASSESSMENT, COLLECTION, AND REMITTANCE.—(A) Notwithstanding any other provision of this section, within ERCOT, the assessment provided for in subsection (d) shall be—

(i) levied directly on qualified scheduling entities, or their successor entities;

(ii) charged consistent with other charges imposed on qualified scheduling entities as a fee on energy used by the load-serving entities; and

(iii) collected and remitted by ERCOT to the Corporation in the amounts and in the same manner as set forth in subsection (d).

(B) The assessment amounts referred to in subparagraph (A) shall be—

(i) determined by the amount and types of fossil fuel-based electricity delivered directly to all retail customers in the prior calendar year beginning with the year ending immediately prior to the period described in subsection (b)(2); and

(ii) take into account the number of renewable energy credits retired by the load-serving entities represented by a qualified scheduling entity within the prior calendar year.

(2) ADMINISTRATION EXPENSES.—Up to 1 percent of the funds collected in any fiscal year by ERCOT under the provisions of this subsection may be used for the administrative expenses incurred in the determination, collection and remittance of the assessments to the Corporation.

(3) AUDIT.—ERCOT shall provide a copy of its annual audit pertaining to the administration of the provisions of this subsection to the Corporation.

(4) DEFINITIONS.—For the purposes of this subsection:

(A) The term ''ERCOT'' means the Electric Reliability Council of Texas.

(B) The term ''load-serving entities'' has the meaning adopted by ERCOT Protocols and in effect on the date of enactment of this Act.

(C) The term ''qualified scheduling entities'' has the meaning adopted by ERCOT Protocols and in effect on the date of enactment of this Act.

(D) The term ''renewable energy credit'' has the meaning as promulgated and adopted by the Public Utility Commission of Texas pursuant to section 39.904(b) of the Public Utility

Regulatory Act of 1999, and in effect on the date of enactment of this Act.

(f) DETERMINATION OF FOSSIL FUEL-BASED ELECTRICITY DELIVERIES.—

(1) FINDINGS.—The Congress finds that:

(A) The assessments under subsection (d) are to be collected based on the amount of fossil fuel-based electricity delivered by each distribution utility.

(B) Since many distribution utilities purchase all or part of their retail consumer's electricity needs from other entities, it may not be practical to determine the precise fuel mix for the power sold by each individual distribution utility.

(C) It may be necessary to use average data, often on a regional basis with reference to Regional Transmission Organization (''RTO'') or NERC regions, to make the determinations necessary for making assessments.

(2) DOE PROPOSED RULE.—The Secretary, acting in close consultation with the Energy Information Administration, shall issue for notice and comment a proposed rule to determine the level of fossil fuel electricity delivered to retail customers by

each distribution utility in the United States during the most recent calendar year or other period determined to be most appropriate. Such proposed rule shall balance the need to be efficient, reasonably precise, and timely, taking into account the nature and cost of data currently available and the nature of markets and regulation in effect in various regions of the country. Different methodologies may be applied in different regions if appropriate to obtain the best balance of such factors.

(3) FINAL RULE.—Within 6 months after the date of enactment of this Act, and after opportunity for comment, the Secretary shall issue a final rule under this subsection for determining the level and type of fossil fuel-based electricity delivered to retail customers by each distribution utility in the United States during the appropriate period. In issuing such rule, the Secretary may consider opportunities and costs to develop new data sources in the future and issue recommendations for the Energy Information Administration or other entities to collect such data. After notice and opportunity for comment the Secretary may, by rule, subsequently update and modify the methodology for making such determinations.

(4) ANNUAL DETERMINATIONS.—Pursuant to the final rule issued under paragraph (3), the Secretary shall make annual determinations of the amounts and types for each such utility and publish such determinations in the Federal Register. Such determinations shall be used to conduct the referendum under subsection (b) and by the Corporation in applying any assessment under this subsection.

(5) REHEARING AND JUDICIAL REVIEW.—The owner or operator of any distribution utility that believes that the Secretary has misapplied the methodology in the final rule in determining the amount and types of fossil fuel electricity delivered by such distribution utility may seek rehearing of such determination within 30 days of publication of the determination in the Federal Register. The Secretary shall decide such rehearing petitions within 30 days. The Secretary's determinations following rehearing shall be final and subject to judicial review in the United States Court of Appeals for the District of Columbia.

(g) COMPLIANCE WITH CORPORATION ASSESSMENTS.—The Corporation may bring an action in the appropriate court of the United States to compel compliance

with an assessment levied by the Corporation under this section. A successful action for compliance under this subsection may also require payment by the defendant of the costs incurred by the Corporation in bringing such action.

(h) MIDCOURSE REVIEW.—Not later than 5 years following establishment of the Corporation, the Comptroller General of the United States shall prepare an analysis, and report to Congress, assessing the Corporation's activities, including project selection and methods of disbursement of assessed fees, impacts on the prospects for commercialization of carbon capture and storage technologies, adequacy of funding, and administration of funds. The report shall also make such recommendations as may be appropriate in each of these areas. The Corporation shall reimburse the Government Accountability Office for the costs associated with performing this midcourse review.

(i) RECOVERY OF COSTS.—

(1) IN GENERAL.—A distribution utility whose transmission, delivery, or sales of electric energy are subject to any form of rate regulation shall not be denied the opportunity to recover the full amount of the prudently incurred costs associated with complying with this section, consistent with applicable State or Federal law.

(2) RATEPAYER REBATES.—Regulatory authorities that approve cost recovery pursuant to paragraph (1) may order rebates to ratepayers to the extent that distribution utilities are reimbursed undedicated or unassigned balances pursuant to subsection (d)(3).

(j) TECHNICAL ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—There is established an advisory committee, to be known as the ''Technical Advisory Committee''.

(2) MEMBERSHIP.—The Technical Advisory Committee shall be comprised of not less than 7 members appointed by the Board from among academic institutions, national laboratories, independent research institutions, and other qualified institutions. No member of the Committee shall be affiliated with EPRI or with any organization having members serving on the Board. At least one member of the Committee shall be appointed from among officers or employees of the Department of Energy recommended to the Board by the Secretary of Energy.

(3) CHAIRPERSON AND VICE CHAIRPERSON.—The Board shall designate one member of the Technical Advisory Committee to serve as Chairperson of

the Committee and one to serve as Vice Chairperson of the Committee.

(4) COMPENSATION.—The Board shall provide compensation to members of the Technical Advisory Committee for travel and other incidental expenses and such other compensation as the Board determines to be necessary.

(5) PURPOSE.—The Technical Advisory Committee shall provide independent assessments and technical evaluations, as well as make non-binding recommendations to the Board, concerning Corporation activities, including but not limited to the following:

(A) Reviewing and evaluating the Corporation's plans and budgets described in subsection (c)(9), as well as any other appropriate areas, which could include approaches to prioritizing technologies, appropriateness of engineering techniques, monitoring and verification technologies for storage, geological site selection, and cost control measures.

(B) Making annual non-binding recommendations to the Board concerning any of the matters referred to in subparagraph (A), as well as what types of investments, scientific re-

search, or engineering practices would best further the goals of the Corporation.

(6) PUBLIC AVAILABILITY.—All reports, evaluations, and other materials of the Technical Advisory Committee shall be made available to the public by the Board, without charge, at time of receipt by the Board.

(k) LOBBYING RESTRICTIONS.—No funds collected by the Corporation shall be used in any manner for influencing legislation or elections, except that the Corporation may recommend to the Secretary and the Congress changes in this section or other statutes that would further the purposes of this section.

(l) DAVIS-BACON COMPLIANCE.—The Corporation shall ensure that entities receiving grants, contracts, or other financial support from the Corporation for the project activities authorized by this section are in compliance with the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

SEC. 115. COMMERCIAL DEPLOYMENT OF CARBON CAPTURE AND SEQUESTRATION TECHNOLOGIES.

Part H of title VII of the Clean Air Act (as added by section 321 of this Act) is amended by adding the following new section after section 785:

"SEC. 786. COMMERCIAL DEPLOYMENT OF CARBON CAPTURE AND SEQUESTRATION TECHNOLOGIES.

"(a) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations providing for the distribution of emission allowances allocated pursuant to section 782(f), pursuant to the requirements of this section, to support the commercial deployment of carbon capture and sequestration technologies in both electric power generation and industrial operations.

"(b) ELIGIBILITY CRITERIA.—For an owner or operator of a project to be eligible to receive emission allowances under this section, the project must—

"(1) implement carbon capture and sequestration technology—

"(A) at an electric generating unit that—

"(i) has a nameplate capacity of 200 megawatts or more;

"(ii) in the case of a retrofit application, applies the carbon capture and sequestration technology to the flue gas from at least 200 megawatts of the total nameplate generating capacity of the unit, provided that clause (i) shall apply without exception;

"(iii) derives at least 50 percent of its annual fuel input from coal, petroleum coke, or any combination of these 2 fuels; and

"(iv) upon implementation of capture and sequestration technology, will achieve an emission limit that is at least a 50 percent reduction in emissions of the carbon dioxide produced by—

"(I) the unit, measured on an annual basis, determined in accordance with section 812(b)(2); or

"(II) in the case of retrofit applications under clause (ii), the treated portion of flue gas from the unit, measured on an annual basis, determined in accordance with section 812(b)(2); or

"(B) at an industrial source that—

"(i) absent carbon capture and sequestration, would emit greater than 50,000 tons per year of carbon dioxide;

"(ii) upon implementation, will achieve an emission limit that is at least a 50 percent reduction in emissions of the

carbon dioxide produced by the emission point, measured on an annual basis, determined in accordance with section 812(b)(2); and

"(iii) does not produce a liquid transportation fuel from a solid fossil-based feedstock;

"(2) geologically sequester carbon dioxide at a site that meets all applicable permitting and certification requirements for geologic sequestration, or, pursuant to such requirements as the Administrator may prescribe by regulation, convert captured carbon dioxide to a stable form that will safely and permanently sequester such carbon dioxide;

"(3) meet all other applicable State, tribal, and Federal permitting requirements; and

"(4) be located in the United States.

"(c) PHASE I DISTRIBUTION TO ELECTRIC GENERATING UNITS.—

"(1) APPLICATION.—This subsection shall apply only to projects at the first 6 gigawatts of electric generating units, measured in cumulative generating capacity of such units, that receive allowances under this section.

"(2) DISTRIBUTION.—The Administrator shall distribute emission allowances allocated under section 782(f) to the owner or operator of each eligible project at an electric generating unit in a quantity equal to the quotient obtained by dividing—

"(A) the product obtained by multiplying—

"(i) the number of metric tons of carbon dioxide emissions avoided through capture and sequestration of emissions by the project, as determined pursuant to such methodology as the Administrator shall prescribe by regulation; and

"(ii) a bonus allowance value, pursuant to paragraph (3); by

"(B) the average fair market value of an emission allowance during the preceding year.

"(3) BONUS ALLOWANCE VALUES.—

"(A) For a generating unit achieving the capture and sequestration of 85 percent or more of the carbon dioxide that otherwise would be emitted by such unit, the bonus allowance value shall be $90 per ton.

"(B) The Administrator shall by regulation establish a bonus allowance value for each rate

of lower capture and sequestration achieved by a generating unit, from a minimum of $50 per ton for a 50 percent rate and varying directly with increasing rates of capture and sequestration up to $90 per ton for an 85 percent rate.

"(C) For a generating unit that achieves the capture and sequestration of at least 50 percent of the carbon dioxide that otherwise would be emitted by such unit by not later than January 1, 2017, the otherwise applicable bonus allowance value under this paragraph shall be increased by $10, provided that the owner of such unit notifies the Administrator by not later than January 1, 2012, of its intent to achieve such rate of capture and sequestration.

"(D) For a carbon capture and sequestration project sequestering in a geological formation for purposes of enhanced hydrocarbon recovery, the Administrator shall, by regulation, reduce the applicable bonus allowance value under this paragraph to reflect the lower net cost of the project when compared to sequestration into geological formations solely for purposes of sequestration.

"(E) The Administrator shall annually adjust for inflation the bonus allowance values established under this paragraph.

"(d) PHASE II DISTRIBUTION TO ELECTRIC GENERATING UNITS.—

"(1) APPLICATION.—This subsection shall apply only to the distribution of emission allowances for carbon capture and sequestration projects at electric generating units after the capacity threshold identified in subsection (c)(1) is reached.

"(2) REGULATIONS.—Not later than 2 years prior to the date on which the capacity threshold identified in subsection (c)(1) is projected to be reached, the Administrator shall promulgate regulations to govern the distribution of emission allowances to the owners or operators of eligible projects under this subsection.

"(3) REVERSE AUCTIONS.—

"(A) IN GENERAL.—Except as provided in paragraph (4), the regulations promulgated under paragraph (2) shall provide for the distribution of emission allowances to the owners or operators of eligible projects under this subsection through reverse auctions, which shall be held no less frequently than once each calendar

year. The Administrator may establish a separate auction for each of no more than 5 different project categories, defined on the basis of coal type, capture technology, geological formation type, new unit versus retrofit application, such other factors as the Administrator may prescribe, or any combination thereof. The Administrator may establish appropriate minimum rates of capture and sequestration in implementing this paragraph.

"(B) AUCTION PROCESS.—At each reverse auction—

"(i) the Administrator shall solicit bids from eligible projects;

"(ii) eligible projects participating in the auction shall submit a bid including the desired level of carbon dioxide sequestration incentive per ton and the estimated quantity of carbon dioxide that the project will permanently sequester over 10 years; and

"(iii) the Administrator shall select bids, within each auction, for the sequestration amount submitted, beginning with the eligible project submitting the bid for

the lowest level of sequestration incentive on a per ton basis and meeting such other requirements as the Administrator may specify, until the amount of funds available for the reverse auction is committed.

"(C) FORM OF DISTRIBUTION.—The Administrator shall distribute emission allowances to the owners or operators of eligible projects selected through a reverse auction under this paragraph pursuant to a formula equivalent to that described in subsection (c)(2), except that the bonus allowance value that is bid by the entity shall be substituted for the bonus allowance values set forth in subsection (c)(3).

"(4) ALTERNATIVE DISTRIBUTION METHOD.—

"(A) IN GENERAL.—If the Administrator determines that reverse auctions would not provide for efficient and cost-effective commercial deployment of carbon capture and sequestration technologies, the Administrator may instead, through regulations promulgated under paragraph (2) or (5), prescribe a schedule for the award of bonus allowances to the owners or operators of eligible projects under this sub-

section, in accordance with the requirements of this paragraph.

"(B) MULTIPLE TRANCHES.—The Administrator shall divide emission allowances available for distribution to the owners or operators of eligible projects into a series of tranches, each supporting the deployment of a specified quantity of cumulative electric generating capacity utilizing carbon capture and sequestration technology, each of which shall not be greater than 6 gigawatts.

"(C) METHOD OF DISTRIBUTION.—The Administrator shall distribute emission allowances within each tranche, on a first-come, first-served basis—

"(i) based on the date of full-scale operation of capture and sequestration technology; and

"(ii) pursuant to a formula, similar to that set forth in subsection (c)(2) (except that the Administrator shall prescribe bonus allowance values different than those set forth in subsection (c)(3)), establishing the number of allowances to be distributed

per ton of carbon dioxide sequestered by the project.

"(D) REQUIREMENTS.—For each tranche established pursuant to subparagraph (B), the Administrator shall establish a schedule for distributing emission allowances that—

"(i) is based on a sliding scale that provides higher bonus allowance values for projects achieving higher rates of capture and sequestration;

"(ii) for each capture and sequestration rate, establishes a bonus allowance value that is lower than that established for such rate in the previous tranche (or, in the case of the first tranche, than that established for such rate under subsection (c)(3)); and

"(iii) may establish different bonus allowance levels for no more than 5 different project categories, defined by coal type, capture technology, geological formation type, new unit versus retrofit application, such other factors as the Administrator may prescribe, or any combination thereof.

"(E) CRITERIA FOR ESTABLISHING BONUS ALLOWANCE VALUES.—In setting bonus allowance values under this paragraph, the Administrator shall seek to cover no more than the reasonable incremental capital and operating costs of a project that are attributable to implementation of carbon capture, transportation, and sequestration technologies, taking into account—

"(i) the reduced cost of compliance with section 722 of this Act;

"(ii) the reduced cost associated with sequestering in a geological formation for purposes of enhanced hydrocarbon recovery when compared to sequestration into geological formations solely for purposes of sequestration;

"(iii) the relevant factors defining the project category; and

"(iv) such other factors as the Administrator determines are appropriate.

"(5) REVISION OF REGULATIONS.—The Administrator shall review, and as appropriate revise, the applicable regulations under this subsection no less frequently than every 8 years.

1 "(e) LIMITS FOR CERTAIN ELECTRIC GENERATING
2 UNITS.—
3 "(1) DEFINITIONS.—For purposes of this sub-
4 section, the terms 'covered EGU' and 'initially per-
5 mitted' shall have the meaning given those terms in
6 section 812 of this Act.
7 "(2) COVERED EGUS INITIALLY PERMITTED
8 FROM 2009 THROUGH 2014.—For a covered EGU
9 that is initially permitted on or after January 1,
10 2009, and before January 1, 2015, the Adminis-
11 trator shall reduce the quantity of emission allow-
12 ances that the owner or operator of such covered
13 EGU would otherwise be eligible to receive under
14 this section as follows:
15 "(A) In the case of a unit commencing op-
16 eration on or before January 1, 2019, if the
17 date in clause (ii)(I) is earlier than the date in
18 clause (ii)(II), by the product of—
19 "(i) 20 percent; and
20 "(ii) the number of years, if any, that
21 have elapsed between—
22 "(I) the earlier of January 1,
23 2020, or the date that is 5 years after
24 the commencement of operation of
25 such covered EGU; and

"(II) the first year that such covered EGU achieves (and thereafter maintains) an emission limit that is at least a 50 percent reduction in emissions of the carbon dioxide produced by the unit, measured on an annual basis, as determined in accordance with section 812(b)(2).

"(B) In the case of a unit commencing operation after January 1, 2019, by the product of—

"(i) 20 percent; and

"(ii) the number of years between—

"(I) the commencement of operation of such covered EGU; and

"(II) the first year that such covered EGU achieves (and thereafter maintains) an emission limit that is at least a 50 percent reduction in emissions of the carbon dioxide produced by the unit, measured on an annual basis, as determined in accordance with section 812(b)(2).

"(3) COVERED EGUS INITIALLY PERMITTED FROM 2015 THROUGH 2019.—The owner or operator

of a covered EGU that is initially permitted on or after January 1, 2015, and before January 1, 2020, shall be ineligible to receive emission allowances pursuant to this section if such unit, upon commencement of operations (and thereafter), does not achieve and maintain an emission limit that is at least a 50 percent reduction in emissions of the carbon dioxide produced by the unit, measured on an annual basis, as determined in accordance with section 812(b)(2).

"(f) INDUSTRIAL SOURCES.—

"(1) ALLOWANCES.—The Administrator may distribute not more than 15 percent of the allowances allocated under section 782(f) for any vintage year to the owners or operators of eligible industrial sources to support the commercial-scale deployment of carbon capture and sequestration technologies at such sources.

"(2) DISTRIBUTION.—The Administrator shall, by regulation, prescribe requirements for the distribution of emission allowances to the owners or operators of industrial sources under this subsection, based on a bonus allowance formula that awards allowances to qualifying projects on the basis of tons of carbon dioxide captured and permanently seques-

tered. The Administrator may provide for the distribution of emission allowances pursuant to—

"(A) a reverse auction method, similar to that described under subsection (d)(3), including the use of separate auctions for different project categories; or

"(B) an incentive schedule, similar to that described under subsection (d)(4), which shall ensure that incentives are set so as to satisfy the requirement described in subsection (d)(4)(E).

"(3) REVISION OF REGULATIONS.—The Administrator shall review, and as appropriate revise, the applicable regulations under this subsection no less frequently than every 8 years.

"(g) LIMITATIONS.—Allowances may be distributed under this section only for tons of carbon dioxide emissions that have already been captured and sequestered. A qualifying project may receive annual emission allowances under this section only for the first 10 years of operation. No greater than 72 gigawatts of total cumulative generating capacity (including industrial applications, measured by such equivalent metric as the Administrator may designate) may receive emission allowances under this section. Upon reaching the limit described in the preceding

sentence, any emission allowances that are allocated for carbon capture and sequestration deployment under section 782(f) and are not yet obligated under this section shall be treated as allowances not designated for distribution for purposes of section 782(r).

"(h) EXHAUSTION OF ACCOUNT AND ANNUAL ROLLOVER OF SURPLUS ALLOWANCES.—

"(1) In distributing emission allowances under this section, the Administrator shall ensure that qualifying projects receiving allowances receive distributions for 10 years.

"(2) If the Administrator determines that the emission allowances allocated under section 782(f) with a vintage year that matches the year of distribution will be exhausted once the estimated full 10-year distributions will be provided to current eligible participants, the Administrator shall provide to new eligible projects allowances from vintage years after the year of the distribution.

"(i) RETROFIT APPLICATIONS.—(1) In calculating bonus allowance values for retrofit applications eligible under subsection (b)(1)(A)(ii) and (iv)(II), the Administrator shall apply the required capture rates with respect to the treated portion of flue gas from the unit.

"(2) No additional projects shall be eligible for allowances under subsection (b)(1)(A)(ii) and (iv)(II) as of such time as the Administrator reports, pursuant to section 812(d), that carbon capture and sequestration retrofit projects at electric generating units that are eligible for allowances under this section have been applied, in the aggregate, to the flue gas generated by 1 gigawatt of total cumulative generating capacity.

"(j) DAVIS-BACON COMPLIANCE.—All laborers and mechanics employed on projects funded directly by or assisted in whole or in part by this section through the use of emission allowances shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV, chapter 31, part A of subtitle II of title 40, United States Code. With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.".

SEC. 116. PERFORMANCE STANDARDS FOR COAL-FUELED POWER PLANTS.

(a) IN GENERAL.—Title VIII of the Clean Air Act (as added by section 331 of this Act) is amended by adding the following new section after section 811:

"SEC. 812. PERFORMANCE STANDARDS FOR NEW COAL-FIRED POWER PLANTS.

"(a) DEFINITIONS.—For purposes of this section:

"(1) COVERED EGU.—The term 'covered EGU' means a utility unit that is required to have a permit under section 503(a) and is authorized under state or federal law to derive at least 30 percent of its annual heat input from coal, petroleum coke, or any combination of these fuels.

"(2) INITIALLY PERMITTED.—The term 'initially permitted' means that the owner or operator has received a Clean Air Act preconstruction approval or permit, for the covered EGU as a new (not a modified) source, but administrative review or appeal of such approval or permit has not been exhausted. A subsequent modification of any such approval or permits, ongoing administrative or court review, appeals, or challenges, or the existence or tolling of any time to pursue further review, appeals, or challenges shall not affect the date on which a

1 covered EGU is considered to be initially permitted
2 under this paragraph.
3 "(b) STANDARDS.—(1) A covered EGU that is ini-
4 tially permitted on or after January 1, 2020, shall achieve
5 an emission limit that is a 65 percent reduction in emis-
6 sions of the carbon dioxide produced by the unit, as
7 measured on an annual basis, or meet such more stringent
8 standard as the Administrator may establish pursuant to
9 subsection (c).
10 "(2) A covered EGU that is initially permitted after
11 January 1, 2009, and before January 1, 2020, shall, by
12 the applicable compliance date established under this
13 paragraph, achieve an emission limit that is a 50 percent
14 reduction in emissions of the carbon dioxide produced by
15 the unit, as measured on an annual basis. Compliance
16 with the requirement set forth in this paragraph shall be
17 required by the earliest of the following:
18 "(A) Four years after the date the Adminis-
19 trator has published pursuant to subsection (d) a re-
20 port that there are in commercial operation in the
21 United States electric generating units or other sta-
22 tionary sources equipped with carbon capture and
23 sequestration technology that, in the aggregate—
24 "(i) have a total of at least 4 gigawatts of
25 nameplate generating capacity of which—

"(I) at least 3 gigawatts must be electric generating units; and

"(II) up to 1 gigawatt may be industrial applications, for which capture and sequestration of 3 million tons of carbon dioxide per year on an aggregate annualized basis shall be considered equivalent to 1 gigawatt;

"(ii) include at least 2 electric generating units, each with a nameplate generating capacity of 250 megawatts or greater, that capture, inject, and sequester carbon dioxide into geologic formations other than oil and gas fields; and

"(iii) are capturing and sequestering in the aggregate at least 12 million tons of carbon dioxide per year, calculated on an aggregate annualized basis.

"(B) January 1, 2025.

"(3) If the deadline for compliance with paragraph (2) is January 1, 2025, the Administrator may extend the deadline for compliance by a covered EGU by up to 18 months if the Administrator makes a determination, based on a showing by the owner or operator of the unit, that it will be technically infeasible for the unit to meet the

1 standard by the deadline. The owner or operator must
2 submit a request for such an extension by no later than
3 January 1, 2022, and the Administrator shall provide for
4 public notice and comment on the extension request.

5 "(c) REVIEW AND REVISION OF STANDARDS.—Not
6 later than 2025 and at 5-year intervals thereafter, the Ad-
7 ministrator shall review the standards for new covered
8 EGUs under this section and shall, by rule, reduce the
9 maximum carbon dioxide emission rate for new covered
10 EGUs to a rate which reflects the degree of emission limi-
11 tation achievable through the application of the best sys-
12 tem of emission reduction which (taking into account the
13 cost of achieving such reduction and any nonair quality
14 health and environmental impact and energy require-
15 ments) the Administrator determines has been adequately
16 demonstrated.

17 "(d) REPORTS.—Not later than the date 18 months
18 after the date of enactment of this title and semiannually
19 thereafter, the Administrator shall publish a report on the
20 nameplate capacity of units (determined pursuant to sub-
21 section (b)(2)(A)) in commercial operation in the United
22 States equipped with carbon capture and sequestration
23 technology, including the information described in sub-
24 section (b)(2)(A) (including the cumulative generating ca-
25 pacity to which carbon capture and sequestration retrofit

projects meeting the criteria described in section 786(b)(1)(A)(ii) and (b)(1)(A)(iv)(II) has been applied and the quantities of carbon dioxide captured and sequestered by such projects).

"(e) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations to carry out the requirements of this section.".

Subtitle C—Clean Transportation

SEC. 121. ELECTRIC VEHICLE INFRASTRUCTURE.

(a) AMENDMENT OF PURPA.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(20) PLUG-IN ELECTRIC DRIVE VEHICLE INFRASTRUCTURE.—

"(A) UTILITY PLAN FOR INFRASTRUCTURE.—Each electric utility shall develop a plan to support the use of plug-in electric drive vehicles, including heavy-duty hybrid electric vehicles. The plan may provide for deployment of electrical charging stations in public or private locations, including street parking, parking garages, parking lots, homes, gas stations, and highway rest stops. Any such plan may also include—

"(i) battery exchange, fast charging infrastructure and other services;

"(ii) triggers for infrastructure deployment based upon market penetration of plug-in electric drive vehicles; and

"(iii) such other elements as the State determines necessary to support plug-in electric drive vehicles.

Each plan under this paragraph shall provide for the deployment of the charging infrastructure or other infrastructure necessary to adequately support the use of plug-in electric drive vehicles.

"(B) SUPPORT REQUIREMENTS.—Each State regulatory authority (in the case of each electric utility for which it has ratemaking authority) and each utility (in the case of a non-regulated utility) shall—

"(i) require that charging infrastructure deployed is interoperable with products of all auto manufacturers to the extent possible; and

"(ii) consider adopting minimum requirements for deployment of electrical charging infrastructure and other appro-

priate requirements necessary to support the use of plug-in electric drive vehicles.

"(C) COST RECOVERY.—Each State regulatory authority (in the case of each electric utility for which it has ratemaking authority) and each utility (in the case of a nonregulated utility) shall consider whether, and to what extent, to allow cost recovery for plans and implementation of plans.

"(D) SMART GRID INTEGRATION.—The State regulatory authority (in the case of each electric utility for which it has ratemaking authority) and each utility (in the case of a nonregulated utility) shall, in accordance with regulations issued by the Federal Energy Regulatory Commission pursuant to section 1305(d) of the Energy Independence and Security Act of 2007—

"(i) establish any appropriate protocols and standards for integrating plug-in electric drive vehicles into an electrical distribution system, including Smart Grid systems and devices as described in title XIII of the Energy Independence and Security Act of 2007;

"(ii) include, to the extent feasible, the ability for each plug-in electric drive vehicle to be identified individually and to be associated with its owner's electric utility account, regardless of the location that the vehicle is plugged in, for purposes of appropriate billing for any electricity required to charge the vehicle's batteries as well as any crediting for electricity provided to the electric utility from the vehicle's batteries; and

"(iii) review the determination made in response to section 1252 of the Energy Policy Act of 2005 in light of this section, including whether time-of-use pricing should be employed to enable the use of plug-in electric drive vehicles to contribute to meeting peak-load and ancillary service power needs.".

(b) COMPLIANCE.—

(1) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding the following at the end thereof:

"(7)(A) Not later than 3 years after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 111, or set a hearing date for consideration, with respect to the standard established by paragraph (20) of section 111(d).

"(B) Not later than 4 years after the date of enactment of the this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (20) of section 111(d).".

(2) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding the following at the end: "In the case of the standards established by paragraph (20) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph.".

(3) PRIOR STATE ACTIONS.—Section 112(d) of the Public Utility Regulatory Policies Act of 1978

(16 U.S.C. 2622(d)) is amended by striking ''(19)'' and inserting ''(20)'' before ''of section 111(d)''.

SEC. 122. LARGE-SCALE VEHICLE ELECTRIFICATION PROGRAM.

(a) DEPLOYMENT PROGRAM.—The Secretary of Energy shall establish a program to deploy and integrate plug-in electric drive vehicles into the electricity grid in multiple regions. In carrying out the program, the Secretary may provide financial assistance described under subsection (d), consistent with the goals under subsection (b). The Secretary shall select regions based upon applications for assistance received pursuant to subsection (c).

(b) GOALS.—The goals of the program established pursuant to subsection (a) shall be—

(1) to demonstrate the viability of a vehicle-based transportation system that is not overly dependent on petroleum as a fuel and contributes to lower carbon emissions than a system based on conventional vehicles;

(2) to facilitate the integration of advanced vehicle technologies into electricity distribution areas to improve system performance and reliability;

(3) to demonstrate the potential benefits of coordinated investments in vehicle electrification on personal mobility and a regional grid;

(4) to demonstrate protocols and standards that facilitate vehicle integration into the grid; and

(5) to investigate differences in each region and regulatory environment regarding best practices in implementing vehicle electrification.

(c) APPLICATIONS.—Any State, Indian tribe, or local government (or group of State, Indian tribe, or local governments) may apply to the Secretary of Energy for financial assistance in furthering the regional deployment and integration into the electricity grid of plug-in electric drive vehicles. Such applications may be jointly sponsored by electric utilities, automobile manufacturers, technology providers, car sharing companies or organizations, or other persons or entities.

(d) USE OF FUNDS.—Pursuant to applications received under subsection (c), the Secretary may make financial assistance available to any applicant or joint sponsor of the application to be used for any of the following:

(1) Assisting persons located in the regional deployment area, including fleet owners, in the purchase of new plug-in electric drive vehicles by offsetting in whole or in part the incremental cost of such vehicles above the cost of comparable conventionally fueled vehicles.

(2) Supporting the use of plug-in electric drive vehicles by funding projects for the deployment of any of the following:

(A) Electrical charging infrastructure for plug-in electric drive vehicles, including battery exchange, fast charging infrastructure, and other services, in public or private locations, including street parking, parking garages, parking lots, homes, gas stations, and highway rest stops.

(B) Smart Grid equipment and infrastructure, as described in title XIII of the Energy Independence and Security Act of 2007, to facilitate the charging and integration of plug-in electric drive vehicles.

(3) Such other projects as the Secretary determines appropriate to support the large-scale deployment of plug-in electric drive vehicles in regional deployment areas.

(e) PROGRAM REQUIREMENTS.—The Secretary, in consultation with the Administrator and the Secretary of Transportation, shall determine design elements and requirements of the program established pursuant to subsection (a), including—

(1) the type of financial mechanism with which to provide financial assistance;

(2) criteria for evaluating applications submitted under subsection (c), including the anticipated ability to promote deployment and market penetration of vehicles that are less dependent on petroleum as a fuel source; and

(3) reporting requirements for entities that receive financial assistance under this section, including a comprehensive set of performance data characterizing the results of the deployment program.

(f) INFORMATION CLEARINGHOUSE.—The Secretary shall, as part of the program established pursuant to subsection (a), collect and make available to the public information regarding the cost, performance, and other technical data regarding the deployment and integration of plug-in electric drive vehicles.

(g) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 123. PLUG-IN ELECTRIC DRIVE VEHICLE MANUFACTURING.

(a) VEHICLE MANUFACTURING ASSISTANCE PROGRAM.—The Secretary of Energy shall establish a program to provide financial assistance to automobile manu-

1 facturers to facilitate the manufacture of plug-in electric
2 drive vehicles, as defined in section 131(a)(5) of the En-
3 ergy Independence and Security Act of 2007, that are de-
4 veloped and produced in the United States.

5 (b) FINANCIAL ASSISTANCE.—The Secretary of En-
6 ergy may provide financial assistance to an automobile
7 manufacturer under the program established pursuant to
8 subsection (a) for—

9 (1) the reconstruction or retooling of facilities
10 for the manufacture of plug-in electric drive vehicles
11 that are developed and produced in the United
12 States; and

13 (2) if appropriate, the purchase of vehicle bat-
14 teries to be used in the manufacture of vehicles
15 manufactured pursuant to paragraph (1).

16 (c) COORDINATION WITH REGIONAL DEPLOY-
17 MENT.—The Secretary may provide financial assistance
18 under subsection (b) in conjunction with the award of fi-
19 nancial assistance under the large scale vehicle electrifica-
20 tion program established pursuant to section 122 of this
21 Act.

22 (d) PROGRAM REQUIREMENTS.—The Secretary shall
23 determine design elements and requirements of the pro-
24 gram established pursuant to subsection (a), including—

(1) the type of financial mechanism with which to provide financial assistance;

(2) criteria, in addition to the criteria described under subsection (e), for evaluating applications for financial assistance; and

(3) reporting requirements for automobile manufacturers that receive financial assistance under this section.

(e) CRITERIA.—In selecting recipients of financial assistance from among applicant automobile manufacturers, the Secretary shall give preference to proposals that—

(1) are most likely to be successful; and

(2) are located in local markets that have the greatest need for the facility.

(f) REPORTS.—The Secretary shall annually submit to Congress a report on the program established pursuant to this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 124. INVESTMENT IN CLEAN VEHICLES.

(a) DEFINITIONS.—In this section:

(1) ADVANCED TECHNOLOGY VEHICLES AND QUALIFYING COMPONENTS.—The terms ''advanced technology vehicles'' and ''qualifying components''

shall have the definition of such terms in section 136 of the Energy Independence and Security Act of 2007, except that for purposes of this section, the average base year as described in such section 136(a)(1)(C) shall be the following:

(A) In each of the years 2012 through 2016, model year 2009.

(B) In 2017, the Administrator shall, notwithstanding such section 136(a)(1)(C), determine an appropriate baseline based on technological and economic feasibility.

(2) PLUG-IN ELECTRIC DRIVE VEHICLE.—The term ''plug-in electric drive vehicle'' shall have the definition of such term in section 131 of the Energy Independence and Security Act of 2007.

(b) DISTRIBUTION OF ALLOWANCES.—The Administrator shall, in accordance with this section, distribute emission allowances allocated pursuant to section 782(i) of the Clean Air Act not later than September 30 of 2012 and each calendar year thereafter through 2025.

(c) PLUG-IN ELECTRIC DRIVE VEHICLE MANUFACTURING AND DEPLOYMENT.—

(1) IN GENERAL.—The Administrator shall, at the direction of the Secretary of Energy, provide emission allowances allocated pursuant to section

782(i) to applicants, joint sponsors and automobile manufacturers pursuant to sections 122 and 123 of this Act.

(2) ANNUAL AMOUNT.—In each of the years 2012 through 2017, one-quarter of the portion of the emission allowances allocated pursuant to section 782(i) of the Clean Air Act shall be available to carry out paragraph (1) such that—

(A) one-eighth of the portion shall be available to carry out section 122; and,

(B) one-eighth of the portion shall be available to carry out section 123.

(3) PREFERENCE.—In directing the provision of emission allowances under this subsection to carry out section 122, the Secretary shall give preference to applications under section 122(c) that are jointly sponsored by one or more automobile manufacturers.

(4) MULTI-YEAR COMMITMENTS.—The Administrator shall commit to providing emission allowances to an applicant, joint sponsor, or automobile manufacturer for up to five consecutive years if—

(A) an application under section 122 or 123 of this Act requests a multi-year commitment;

(B) such application meets the criteria for support established by the Secretary of Energy under sections 122 or 123 of this Act;

(C) the Administrator confirms to the Secretary that emission allowances will be available for a multi-year commitment;

(D) the Secretary of Energy determines that a multi-year commitment for such application will advance the goals of section 122 or 123; and

(E) the Secretary of Energy directs the Administrator to make a multi-year commitment.

(5) INSUFFICIENT APPLICATIONS.—If, in any year, emission allowances available under paragraph (2) cannot be provided because of insufficient numbers of submitted applications that meet the criteria for support established by the Secretary of Energy under sections 122 or 123 of this Act, the remaining emission allowances shall be distributed according to subsection (d).

(d) ADVANCED TECHNOLOGY VEHICLES.—

(1) IN GENERAL.—The Administrator shall, at the direction of the Secretary of Energy, provide any emission allowances allocated pursuant to section

782(i) of the Clean Air Act that are not provided under subsection (c) to automobile manufacturers and component suppliers to pay not more than 30 percent of the cost of—

(A) reequipping, expanding, or establishing a manufacturing facility in the United States to produce—

(i) qualifying advanced technology vehicles; or

(ii) qualifying components; and

(B) engineering integration performed in the United States of qualifying vehicles and qualifying components.

(2) PREFERENCE.—In directing the provision of emission allowances under this subsection during the years 2012 through 2017, the Secretary shall give preference to applications for projects that save the maximum number of gallons of fuel.

SEC. 125. ADVANCED TECHNOLOGY VEHICLE MANUFACTURING INCENTIVE LOANS.

Section 136(d)(1) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17013(d)(1)) is amended by striking ''$25,000,000,000'' and inserting ''$50,000,000,000''.

SEC. 126. AMENDMENT TO RENEWABLE FUELS STANDARD.

(a) DEFINITION OF RENEWABLE BIOMASS.—Section 211(o)(1)(I) of the Clean Air Act (42 U.S.C. 7545(o)) is amended to read as follows:

"(I) RENEWABLE BIOMASS.—The term 'renewable biomass' means any of the following:

"(i) Plant material, including waste material, harvested or collected from actively managed agricultural land that was in cultivation, cleared, or fallow and nonforested on January 1, 2009.

"(ii) Plant material, including waste material, harvested or collected from pastureland that was nonforested on January 1, 2009.

"(iii) Nonhazardous vegetative matter derived from waste, including separated yard waste, landscape right-of-way trimmings, construction and demolition debris or food waste (but not recyclable waste paper, painted, treated or pressurized wood, or wood contaminated with plastic or metals).

"(iv) Animal waste or animal byproducts, including products of animal waste digesters.

"(v) Algae.

"(vi) Trees, brush, slash, residues, or any other vegetative matter removed from within 600 feet of any building, campground, or route designated for evacuation by a public official with responsibility for emergency preparedness, or from within 300 feet of a paved road, electric transmission line, utility tower, or water supply line.

"(vii) Residues from or byproducts of milled logs.

"(viii) Any of the following removed from forested land that is not Federal and is not high conservation priority land:

"(I) Trees, brush, slash, residues, interplanted energy crops, or any other vegetative matter removed from an actively managed tree plantation established—

"(aa) prior to January 1, 2009; or

"(bb) on land that, as of January 1, 2009, was cultivated or fallow and non-forested.

"(II) Trees, logging residue, thinnings, cull trees, pulpwood, and brush removed from naturally-regenerated forests or other non-plantation forests, including for the purposes of hazardous fuel reduction or preventative treatment for reducing or containing insect or disease infestation.

"(III) Logging residue, thinnings, cull trees, pulpwood, brush and species that are non-native and noxious, from stands that were planted and managed after January 1, 2009, to restore or maintain native forest types.

"(IV) Dead or severely damaged trees removed within 5 years of fire, blowdown, or other natural disaster, and badly infested trees.

"(ix) Materials, pre-commercial thinnings, or removed invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), including those

that are byproducts of preventive treatments (such as trees, wood, brush, thinnings, chips, and slash), that are removed as part of a federally recognized timber sale, or that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health, and that are—

"(I) not from components of the National Wilderness Preservation System, Wilderness Study Areas, Inventoried Roadless Areas, old growth or mature forest stands, components of the National Landscape Conservation System, National Monuments, National Conservation Areas, Designated Primitive Areas, or Wild and Scenic Rivers corridors;

"(II) harvested in environmentally sustainable quantities, as determined by the appropriate Federal land manager; and

"(III) harvested in accordance with Federal and State law and applicable land management plans.".

(b) DEFINITION OF HIGH CONSERVATION PRIORITY LAND.—Section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)) is amended by inserting the following at the end thereof:

"(M) HIGH CONSERVATION PRIORITY LAND.—The term 'high conservation priority land' means land that is not Federal land and is—

"(i) globally or State ranked as critically imperiled or imperiled under a State Natural Heritage Program; or

"(ii) old-growth or late-successional forest, as identified by the office of the State Forester or relevant State agency with regulatory jurisdiction over forestry activities.".

SEC. 127. OPEN FUEL STANDARD.

(a) FINDINGS.—The Congress finds that—

(1) the status of oil as a strategic commodity, which derives from its domination of the transportation sector, presents a clear and present danger to the United States;

(2) in a prior era, when salt was a strategic commodity, salt mines conferred national power and wars were fought over the control of such mines;

(3) technology, in the form of electricity and refrigeration, decisively ended salt's monopoly of meat preservation and greatly reduced its strategic importance;

(4) fuel competition and consumer choice would similarly serve to end oil's monopoly in the transportation sector and strip oil of its strategic status;

(5) the current closed fuel market has allowed a cartel of petroleum exporting countries to inflate fuel prices, effectively imposing a harmful tax on the economy of the United States;

(6) much of the inflated petroleum revenues the oil cartel earns at the expense of the people of the United States are used for purposes antithetical to the interests of the United States and its allies;

(7) alcohol fuels, including ethanol and methanol, could potentially provide significant supplies of additional fuels that could be produced in the United States and in many other countries in the Western Hemisphere that are friendly to the United States;

(8) alcohol fuels can only play a major role in securing the energy independence of the United States if a substantial portion of vehicles in the United States are capable of operating on such fuels;

(9) it is not in the best interest of United States consumers or the United States Government to be constrained to depend solely upon petroleum resources for vehicle fuels if alcohol fuels are potentially available;

(10) existing technology, in the form of flexible fuel vehicles, allows internal combustion engine cars and trucks to be produced at little or no additional cost, which are capable of operating on conventional gasoline, alcohol fuels, or any combination of such fuels, as availability or cost advantage dictates, providing a platform on which fuels can compete;

(11) the necessary distribution system for such alcohol fuels will not be developed in the United States until a substantial fraction of the vehicles in the United States are capable of operating on such fuels;

(12) the establishment of such a vehicle fleet and distribution system would provide a large market that would mobilize private resources to substantially advance the technology and expand the production of alcohol fuels in the United States and abroad;

(13) the United States has an urgent national security interest to develop alcohol fuels technology,

production, and distribution systems as rapidly as possible;

(14) new cars sold in the United States that are equipped with an internal combustion engine should allow for fuel competition by being flexible fuel vehicles, and new diesel cars should be capable of operating on biodiesel; and

(15) such an open fuel standard would help to protect the United States economy from high and volatile oil prices and from the threats caused by global instability, terrorism, and natural disaster.

(b) OPEN FUEL STANDARD FOR TRANSPORTATION.—(1) Chapter 329 of title 49, United States Code, is amended by adding at the end the following:

"§ 32920. Open fuel standard for transportation

''(a) DEFINITIONS.—In this section:

''(1) E85.—The term 'E85' means a fuel mixture containing 85 percent ethanol and 15 percent gasoline by volume.

''(2) FLEXIBLE FUEL AUTOMOBILE.—The term 'flexible fuel automobile' means an automobile that has been warranted by its manufacturer to operate on gasoline, E85, and M85.

''(3) FUEL CHOICE-ENABLING AUTOMOBILE.—The term 'fuel choice-enabling automobile' means—

"(A) a flexible fuel automobile; or

"(B) an automobile that has been warranted by its manufacturer to operate on biodiesel.

"(4) LIGHT-DUTY AUTOMOBILE.—The term 'light-duty automobile' means—

"(A) a passenger automobile; or

"(B) a non-passenger automobile.

"(5) LIGHT-DUTY AUTOMOBILE MANUFACTURER'S ANNUAL COVERED INVENTORY.—The term 'light-duty automobile manufacturer's annual covered inventory' means the number of light-duty automobiles powered by an internal combustion engine that a manufacturer, during a given calendar year, manufactures in the United States or imports from outside of the United States for sale in the United States.

"(6) M85.—The term 'M85' means a fuel mixture containing 85 percent methanol and 15 percent gasoline by volume.

"(b) OPEN FUEL STANDARD FOR TRANSPORTATION.—

"(1) IN GENERAL.—The Secretary may promulgate regulations to require each light-duty automobile manufacturer's annual covered inventory to

be comprised of a minimum percentage of fuel-choice enabling automobiles, with sufficient lead time, if the Secretary, in coordination with the Secretary of Energy and the Administrator of the Environmental Protection Agency, determines such requirement is a cost-effective way to achieve the Nation's energy independence and environmental objectives. The cost-effective determination shall consider the future availability of both alternative fuel supply and infrastructure to deliver the alternative fuel to the fuel-choice enabling vehicles.

"(2) TEMPORARY EXEMPTION FROM REQUIREMENTS.—

"(A) APPLICATION.—A manufacturer may request an exemption from the requirement described in paragraph (1) by submitting an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require by regulation. Each such application shall specify the models, lines, and types of automobiles affected.

"(B) EVALUATION.—After evaluating an application received from a manufacturer, the Secretary may at any time, under such terms and conditions, and to such extent as the Sec-

retary considers appropriate, temporarily exempt, or renew the exemption of, a light-duty automobile from the requirement described in paragraph (1) if the Secretary determines that unavoidable events not under the control of the manufacturer prevent the manufacturer of such automobile from meeting its required production volume of fuel choice-enabling automobiles, including—

"(i) a disruption in the supply of any component required for compliance with the regulations;

"(ii) a disruption in the use and installation by the manufacturer of such component; or

"(iii) application to plug-in electric drive vehicles causing such vehicles to fail to meet State air quality requirements.

"(C) CONSOLIDATION.—The Secretary may consolidate applications received from multiple manufacturers under subparagraph (A) if they are of a similar nature.

"(D) CONDITIONS.—Any exemption granted under subparagraph (B) shall be conditioned upon the manufacturer's commitment to recall

the exempted automobiles for installation of the omitted components within a reasonable time proposed by the manufacturer and approved by the Secretary after such components become available in sufficient quantities to satisfy both anticipated production and recall volume requirements.

"(E) NOTICE.—The Secretary shall publish in the Federal Register—

"(i) notice of each application received from a manufacturer;

"(ii) notice of each decision to grant or deny a temporary exemption; and

"(iii) the reasons for granting or denying such exemptions.".

(2) The table of contents in chapter 329 of such title is amended adding at the end the following:

"32920. Open fuel standard for transportation.".

SEC. 128. DIESEL EMISSIONS REDUCTION.

Subtitle G of title VII of the Energy Policy Act of 2005 (42 U.S.C. 16131 et seq.) is amended—

(1) in the matter preceding clause (i) in section 791(3)(B), by inserting "in any State" after "nonprofit organization or institution";

(2) in section 791(9), by striking "The term 'State' includes the District of Columbia." and in-

serting "The term 'State' includes the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the Virgin Islands."; and

(3) in section 793(c)—

(A) in paragraph (2)(A), by striking "51 States" and inserting "56 States";

(B) in paragraph (2)(A), by striking "1.96 percent" and inserting "1.785 percent";

(C) in paragraph (2)(B), by striking "51 States" and inserting "56 States"; and

(D) in paragraph (2)(B), by amending clause (ii) to read as follows:

"(ii) the amount of funds remaining after each State described in paragraph (1) receives the 1.785-percent allocation under this paragraph.".

SEC. 129. LOAN GUARANTEES FOR PROJECTS TO CONSTRUCT RENEWABLE FUEL PIPELINES.

(a) DEFINITIONS.—Section 1701 of the Energy Policy Act of 2005 (42 U.S.C. 16511) is amended by adding at the end the following:

"(6) RENEWABLE FUEL.—The term 'renewable fuel' has the meaning given the term in section 211(o)(1) of the Clean Air Act (42 U.S.C.

7545(o)(1)), except that the term shall include all ethanol and biodiesel.

"(7) RENEWABLE FUEL PIPELINE.—The term 'renewable fuel pipeline' means a common carrier pipeline for transporting renewable fuel.".

(b) RENEWABLE FUEL PIPELINE ELIGIBILITY.—Section 1703(b) the Energy Policy Act of 2005 (42 U.S.C. 16513) is amended by adding at the end the following:

"(11) Renewable fuel pipelines.".

Subtitle D—State Energy and Environment Development Accounts

SEC. 131. ESTABLISHMENT OF SEED ACCOUNTS.

(a) DEFINITIONS.—In this section:

(1) SEED ACCOUNT.—The term "SEED Account" means a State Energy and Environment Development Account established pursuant to this section.

(2) STATE ENERGY OFFICE.—The term "State Energy Office" means a State entity eligible for grants under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program under which a State, through its State Energy Office or other State agency des-

ignated by the State, may operate a State Energy and Environment Development Account.

(c) PURPOSE.—The purpose of each SEED Account is to serve as a common State-level repository for managing and accounting for emission allowances provided to States designated for renewable energy and energy efficiency purposes.

(d) REGULATIONS.—Not later than one year after the date of enactment of this Act, the Administrator shall promulgate regulations to carry out this section, including regulations—

(1) to ensure that each State operates its SEED Account and any subaccounts thereof efficiently and in accordance with this Act and applicable State and Federal laws;

(2) to prevent waste, fraud, and abuse;

(3) to indicate the emission allowances that may be deposited in a State's SEED Account pending distribution or use;

(4) to indicate the programs and objectives authorized by Federal law for which emission allowances in a SEED Account may be distributed or used;

(5) to identify the forms of financial assistance and incentives that States may provide through distribution or use of SEED Accounts; and

(6) to prescribe the form and content of reports that the States are required to submit under this section on the use of SEED Accounts.

(e) OPERATION.—

(1) DEPOSITS.—

(A) IN GENERAL.—In the allowance tracking system established pursuant to section 724(d) of the Clean Air Act, the Administrator shall establish a SEED Account for each State and place in it the allowances allocated pursuant to section 782(g) of the Clean Air Act to be distributed to States pursuant to sections 132 and 201 of this Act.

(B) FINANCIAL ACCOUNT.—A State may create a financial account associated with its SEED Account to deposit, retain, and manage any proceeds of any sale of any allowance provided pursuant to this Act pending expenditure or disbursement of those proceeds for purposes permitted under this section. The funds in such an account shall not be commingled with other funds not derived from the sale of allowances

provided to the State; however, loans made by the State from such funds pursuant to paragraph (2)(C)(i) may be repaid into such a financial account, including any interest charged.

(2) WITHDRAWALS.—

(A) IN GENERAL.—All allowances distributed pursuant to sections 132 and 201, including the proceeds of any sale of such allowances, shall support renewable energy and energy efficiency programs authorized or approved by the Federal Government.

(B) DEDICATED ALLOWANCES.—Allowances distributed pursuant to sections 132 and 201 that are required by law to be used for specific purposes for a specified period shall be used according to those requirements during that period.

(C) UNDEDICATED ALLOWANCES.—To the extent that allowances distributed pursuant to sections 132 and 201 are not required by law to be used for specific purposes for a specified period as described in subparagraph (B), such allowances or the proceeds of their sale may be used for any of the following purposes:

(i) LOANS.—Loans of allowances, or the proceeds from the sale of allowances, may be provided, interest on commercial loans may be subsidized at an interest rate as low as zero, and other credit support may be provided to support programs authorized to use SEED Account allowance value or any other renewable energy or energy efficiency purpose authorized or approved by the Federal Government.

(ii) GRANTS.—Grants of allowances or the proceeds of their sale may be provided to support programs authorized to use SEED Account allowance value or any other renewable energy or energy efficiency purpose authorized or approved by the Federal Government.

(iii) OTHER FORMS OF SUPPORT.—Allowances or the proceeds of the sale of allowances may be provided for other forms of support for programs authorized to use SEED Account allowance value or any other renewable energy or energy efficiency purpose authorized or approved by the Federal Government.

(iv) ADMINISTRATIVE COSTS.—Except to the extent provided in Federal law authorizing or allocating allowances deposited in a SEED Account, not more than 5 percent of the allowance value in a SEED Account in any year may be used to cover administrative expenses of the SEED Account.

(D) SUBACCOUNTS.—A State may request that the Administrator establish accounts for local governments that request such subaccounts to hold allowances distributed to local governments for renewable energy or energy efficiency programs authorized or approved by the Federal Government.

(E) INTENDED USE PLANS.—

(i) IN GENERAL.—After providing for public review and comment, each State administering a SEED Account shall annually prepare a plan that identifies the intended uses of the allowances or proceeds from the sale of allowances in its SEED Account.

(ii) CONTENTS.—An intended use plan shall include—

(I) a list of the projects or programs for which withdrawals from the SEED Account are intended in the next fiscal year that begins after the date of the plan, including a description of each project;

(II) the relationship of each of the projects or programs to an identified Federal purpose authorized by this Act, or any other Federal statute;

(III) the expected terms of use of allowance value to provide assistance;

(IV) the criteria and methods established for the distribution of allowances or allowance value;

(V) a description of the equivalent financial value and status of the SEED Account; and

(VI) a statement of the mid-term and long-term goals of the State for use of its SEED Account.

(3) ACCOUNTABILITY AND TRANSPARENCY.—

(A) CONTROLS AND PROCEDURES.—Any State that has a SEED Account shall establish fiscal controls and recordkeeping and account-

ing procedures for the SEED Account sufficient to ensure proper accounting during appropriate accounting periods for distributions into the SEED Account, transfers from the SEED Account, and SEED Account balances, including any related financial accounts. Such controls and procedures shall conform to generally accepted government accounting principles. Any State that has a SEED Account shall retain records for a period of at least 5 years.

(B) AUDITS.—Any State that has a SEED Account shall have an annual audit conducted of the SEED Account by an independent public accountant in accordance with generally accepted auditing standards, and shall transmit the results of that audit to the Administrator.

(C) STATE REPORT.—Each State administering a SEED Account shall make publicly available and submit to the Administrator a report every 2 years on its activities related to its SEED Account.

(D) PUBLIC INFORMATION.—Any—

(i) controls and procedures established under subparagraph (A); and

(ii) information obtained through audits conducted under subparagraph (B), except to the extent that it would be protected from disclosure, if it were information held by the Federal Government, under section 552(b) of title 5, United States Code,

shall be made publicly available.

(E) OTHER PROTECTIONS.—The Administrator shall require such additional procedures and protections as are necessary to ensure that any State that has a SEED Account will operate the SEED Account in an accountable and transparent manner.

(f) REQUIREMENTS FOR ELIGIBILITY.—A State's eligibility to receive allowances in its SEED Account shall depend on that State's compliance with the requirements of this Act (and the amendments made by this Act).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator such sums as may be necessary for SEED Account operations.

SEC. 132. SUPPORT OF STATE RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS.

(a) DEFINITIONS.—For purposes of this section:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act (as added by section 311 of this Act).

(2) COST-EFFECTIVE.—The term ''cost-effective'', with respect to an energy efficiency program, means that the program meets the Total Resource Cost Test, which requires that the net present value of economic benefits over the life of the program or measure, including avoided supply and delivery costs and deferred or avoided investments, is greater than the net present value of the economic costs over the life of the program, including program costs and incremental costs borne by the energy consumer.

(3) RENEWABLE ENERGY RESOURCE.—The term ''renewable energy resource'' shall have the meaning given that term in section 610 of the Public Utility Regulatory Policies Act of 1978 (as added by section 101 of this Act).

(4) VINTAGE YEAR.—The term ''vintage year'' shall the meaning given that term in section 700 of the Clean Air Act (as added by section 311 of this Act).

(b) DISTRIBUTION AMONG STATES.—Not later than September 30 of each calendar year from 2011 through

2049, the Administrator shall, in accordance with this section, distribute allowances allocated pursuant to section 782(g)(1) of the Clean Air Act (as added by section 311 of this Act) for the following vintage year. The Administrator shall distribute 0.5 percent of such allowances pursuant to section 133 of this Act. The Administrator shall distribute the remaining allowances to States for renewable energy and energy efficiency programs to be deposited in and administered through the State Energy and Environment Development (SEED) Accounts established pursuant to section 131. The Administrator shall distribute allowances among the States under this section each year in accordance with the following formula:

(1) One third of the allowances shall be divided equally among the States.

(2) One third of the allowances shall be distributed ratably among the States based on the population of each State, as contained in the most recent reliable census data available from the Bureau of the Census, Department of Commerce, for all States at the time the Administrator calculates the formula for distribution.

(3) One third of the allowances for shall be distributed ratably among the States on the basis of the energy consumption of each State as contained

in the most recent State Energy Data Report available from the Energy Information Administration (or such alternative reliable source as the Administrator may designate).

(c) USES.—The allowances distributed to each State pursuant to this section shall be used exclusively in accordance with the following requirements:

(1) Not less than 12.5 percent shall be distributed by the State to units of local government within such State to be used exclusively to support the energy efficiency and renewable energy purposes listed in paragraphs (2) and (3).

(2) Not less than 20 percent shall be used exclusively for the following energy efficiency purposes, provided that not less than 1 percent shall be used for the purpose described in subparagraph (D) and not less than 5 percent shall be used for the purpose described in subparagraph (E):

(A) Implementation and enforcement of building codes adopted in compliance with section 201.

(B) Implementation of the energy efficient manufactured homes program established pursuant to section 203.

(C) Implementation of the building energy performance labeling program established pursuant to section 204.

(D) Low-income community energy efficiency programs that are consistent with the grant program established under section 264 of this Act.

(E) Implementation of the Retrofit for Energy and Environmental Performance (REEP) program established pursuant to section 202.

(3) Not less than 20 percent shall be used exclusively for capital grants, tax credits, production incentives, loans, loan guarantees, forgivable loans, and interest rate buy-downs for—

(A) re-equipping, expanding, or establishing a manufacturing facility that receives certification from the Secretary of Energy pursuant to section 1302 of the American Recovery and Reinvestment Act of 2009 for the production of—

(i) property designed to be used to produce energy from renewable energy sources; and

(ii) electricity storage systems;

(B) deployment of technologies to generate electricity from renewable energy sources; and

(C) deployment of facilities or equipment, such as solar panels, to generate electricity or thermal energy from renewable energy resources in and on buildings in an urban environment.

(4) The remaining 47.5 percent shall be used exclusively for any of the following purposes:

(A) Energy efficiency purposes described in paragraph (2).

(B) Renewable energy purposes described in paragraph (3)(B) and (C).

(C) Cost-effective energy efficiency programs for end-use consumers of electricity, natural gas, home heating oil, or propane, including, where appropriate, programs or mechanisms administered by local governments and entities other than the State.

(D) Enabling the development of a Smart Grid (as described in section 1301 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381)) for State, local government, and other public buildings and facilities, including integration of renewable energy resources

and distributed generation, demand response, demand side management, and systems analysis.

(E) Providing the non-Federal share of support for surface transportation capital projects under—

(i) sections 5307, 5308, 5309, 5310, 5311 and 5319 of title 49, United States Code; and

(ii) sections 142, 146, and 149 of title 23, United States Code,

provided that not more than 10 percent of allowances distributed to each State pursuant to this section shall be used for such purpose.

(5) For any allowances used for the purpose described in paragraph (4)(C), the State shall—

(A) prioritize expansion of existing energy efficiency programs approved and overseen by the State or the appropriate State regulatory authority; and

(B) demonstrate that such allowances have been used to supplement, and not to supplant, existing and otherwise available State, local, and ratepayer funding for such purpose.

(d) REPORTING.—Each State receiving allowances under this section shall include in its biennial reports required under section 131, in accordance with such requirements as the Administrator may prescribe

(1) a list of entities receiving allowances or allowance value under this section, including entities receiving such allowances or allowance value from units of local government pursuant to subsection (c)(1);

(2) the amount and nature of allowances or allowance value received by each such recipient;

(3) the specific purposes for which such allowances or allowance value was conveyed to each such recipient;

(4) documentation of the amount of energy savings, emission reductions, renewable energy deployment, and new or retooled manufacturing capacity resulting from the use of such allowances or allowance value; and

(5) for any energy efficiency program supported under subsection (c)(4)(C)—

(A) an assessment demonstrating the cost-effectiveness of such program; and

(B) a demonstration that the requirements set forth in subsection (c)(5) have been satisfied.

(e) ENFORCEMENT.—If the Administrator determines that a State is not in compliance with this section, the Administrator may withhold up to twice the number of allowances that the State failed to use in accordance with the requirements of this section, that such State would otherwise be eligible to receive under this section in later years. Allowances withheld pursuant to this subsection shall be distributed among the remaining States in accordance with the requirements of subsection (b).

SEC. 133. SUPPORT OF INDIAN RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS.

(a) DEFINITIONS.—For purposes of this section:

(1) ALLOWANCE; COST-EFFECTIVE; RENEWABLE ENERGY RESOURCE.—The terms ''allowance'', ''cost-effective'', and ''renewable energy resource'' have the meaning given those terms in section 132 of this Act.

(2) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25. U.S.C. 450b).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(b) ESTABLISHMENT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall, in consultation with the Administrator and the Secretary of the Interior, promulgate regulations establishing a program to distribute allowances to Indian tribes on a competitive basis for the following purposes:

(1) ENERGY EFFICIENCY.—Cost-effective energy efficiency programs for end-use consumers of electricity, natural gas, home heating oil, or propane.

(2) RENEWABLE ENERGY.—Deployment of technologies to generate electricity from renewable energy resources.

(c) REQUIREMENTS.—The regulations promulgated pursuant to subsection (b) shall prescribe design elements and requirements of the program established under this section, including—

(1) objective criteria for evaluating proposals submitted by Indian tribes, and for selecting projects and programs to receive support, under this section;

(2) reporting requirements for Indian tribes that receive allowances under this section; and

(3) other appropriate elements and requirements.

(d) DISTRIBUTION.—The Administrator shall, at the direction of the Secretary, distribute to Indian tribes allowances that are set aside, pursuant to section 132, for use under this section.

Subtitle E—Smart Grid Advancement

SEC. 141. DEFINITIONS.

For purposes of this subtitle:

(1) The term ''applicable baseline'' means the average of the highest three annual peak demands a load-serving entity has experienced during the 5 years immediately prior to the date of enactment of this Act.

(2) The term ''Commission'' means Federal Energy Regulatory Commission.

(3) The term ''load-serving entity'' means an entity that provides electricity directly to retail consumers with the responsibility to assure power quality and reliability, including such entities that are investor-owned, publicly owned, owned by rural electric cooperatives, or other entities.

(4) The term ''peak demand'' means the highest point of electricity demand, net of any distributed electricity generation or storage from sources on the load-serving entity's customers' premises,

during any hour on the system of a load serving entity during a calendar year, expressed in Megawatts (MW), or more than one such high point as a function of seasonal demand changes.

(5) The term ''peak demand reduction'' means the reduction in annual peak demand as compared to a previous baseline year or period, expressed in Megawatts (MW), whether accomplished by—

(A) diminishing the end-use requirements for electricity;

(B) use of locally stored energy or generated electricity to meet those requirements from distributed resources on the load-serving entity's customers' premises and without use of high-voltage transmission; or

(C) energy savings from efficient operation of the distribution grid resulting from the use of a Smart Grid.

(6) The term ''peak demand reduction plan'' means a plan developed by or for a load-serving entity that it will implement to meet its peak demand reduction goals.

(7) The term ''peak period'' means the time period on the system of a load-serving entity relative to peak demand that may warrant special measures

or electricity resources to maintain system reliability while meeting peak demand.

(8) The term ''Secretary'' means the Secretary of Energy.

(9) The term ''Smart Grid'' has the meaning provided by section 1301 of the Energy Independence and Security Act of 2007 (15 U.S.C. 17381).

SEC. 142. ASSESSMENT OF SMART GRID COST EFFECTIVENESS IN PRODUCTS.

(a) ASSESSMENT.—Within one year after the date of enactment of this Act, the Secretary and the Administrator shall each assess the potential for cost-effective integration of Smart Grid technologies and capabilities in all products that are reviewed by the Department of Energy and the Environmental Protection Agency, respectively, for potential designation as Energy Star products.

(b) ANALYSIS.—(1) Within 2 years after the date of enactment of this Act, the Secretary and the Administrator shall each prepare an analysis of the potential energy savings, greenhouse gas emission reductions, and electricity cost savings that could accrue for each of the products identified by the assessment in subsection (a) in the following optimal circumstances:

(A) The products possessed Smart Grid capability and interoperability that is tested and proven reliable.

(B) The products were utilized in an electricity utility service area which had Smart Grid capability and offered customers rate or program incentives to use the products.

(C) The utility's rates reflected national average costs, including average peak and valley seasonal and daily electricity costs.

(D) Consumers using such products took full advantage of such capability.

(E) The utility avoided incremental investments and rate increases related to such savings.

(2) The analysis under paragraph (1) shall be considered the ''best case'' Smart Grid analysis. On the basis of such an analysis for each product, the Secretary and the Administrator shall determine whether the installation of Smart Grid capability for such a product would be cost effective. For purposes of this paragraph, the term ''cost effective'' means that the cumulative savings from using the product under the best case Smart Grid circumstances for a period of one-half of the product's expected useful life will be greater than the incremental cost of the Smart Grid features included in the product.

(3) To the extent that including Smart Grid capability in any products analyzed under paragraph (2) is found to be cost effective in the best case, the Secretary and the Administrator shall, not later than 3 years after the date of enactment of this Act take each of the following actions:

(A) Inform the manufacturer of such product of such finding of cost effectiveness.

(B) Assess the potential contributions the development and use of products with Smart Grid technologies bring to reducing peak demand and promoting grid stability.

(C) Assess the potential national energy savings and electricity cost savings that could be realized if Smart Grid potential were installed in the relevant products reviewed by the Energy Star program.

(D) Assess and identify options for providing consumers information on products with Smart Grid capabilities, including the necessary conditions for cost-effective savings.

(E) Submit a report to Congress summarizing the results of the assessment for each class of products, and presenting the potential energy and greenhouse gas savings that could result if Smart Grid

capability were installed and utilized on such products.

SEC. 143. INCLUSIONS OF SMART GRID CAPABILITY ON APPLIANCE ENERGY GUIDE LABELS.

Section 324(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding the following at the end:

"(J)(i) Not later than 1 year after the date of enactment of this subparagraph, the Federal Trade Commission shall initiate a rulemaking to consider making a special note in a prominent manner on any ENERGY GUIDE label for any product actually including Smart Grid capability that—

"(I) Smart Grid capability is a feature of that product;

"(II) the use and value of that feature depended on the Smart Grid capability of the utility system in which the product was installed and the active utilization of that feature by the customer; and

"(III) on a utility system with Smart Grid capability, the use of the product's Smart Grid capability could reduce the customer's cost of the product's annual op-

eration by an estimated dollar amount range representing the result of incremental energy and electricity cost savings that would result from the customer taking full advantage of such Smart Grid capability.

''(ii) Not later than 3 years after the date of enactment of this subparagraph, the Commission shall complete the rulemaking initiated under clause (i).''.

SEC. 144. SMART GRID PEAK DEMAND REDUCTION GOALS.

(a) GOALS.—Not later than one year after the date of enactment of this section, each load-serving entity, or, at the option of the State, each State with respect to load-serving entities that the State regulates, shall determine and publish peak demand reduction goals for any load-serving entities that have an applicable baseline in excess of 250 megawatts.

(b) BASELINES.—(1) The Commission, in consultation with the Secretary and the Administrator, shall develop and publish, after an opportunity for public comment, but not later than 180 days after enactment of this section, a methodology to provide for adjustments or normalization to a load-serving entity's applicable baseline over time to reflect changes in the number of customers

1 served, weather conditions, general economic conditions,
2 and any other appropriate factors external to peak de-
3 mand management, as determined by the Commission.

4 (2) The Commission shall support load-serving enti-
5 ties (including any load-serving entities with an applicable
6 baseline of less than 250 megawatts that volunteer to par-
7 ticipate in achieving the purposes of this section) in deter-
8 mining their applicable baselines, and in developing their
9 peak demand reduction goals.

10 (3) The Secretary, in consultation with the Commis-
11 sion, the Administrator, and the North American Electric
12 Reliability Corporation, shall develop a system and rules
13 for measurement and verification of demand reductions.

14 (c) PEAK DEMAND REDUCTION GOALS.—(1) Peak
15 demand reduction goals may be established for an indi-
16 vidual load-serving entity, or, at the determination of a
17 State, tribal, or regional entity, by that State, tribal, or
18 regional entity for a larger region that shares a common
19 system peak demand and for which peak demand reduc-
20 tion measures would offer regional benefit.

21 (2) A State or regional entity establishing peak de-
22 mand reduction goals shall cooperate, as necessary and
23 appropriate, with the Commission, the Secretary, State
24 regulatory commissions, State energy offices, the North

American Electric Reliability Corporation, and other relevant authorities.

(3) In determining the applicable peak demand reduction goals—

(A) States and other jurisdictional entities may utilize the results of the 2009 National Demand Response Potential Assessment, as authorized by section 571 of the National Energy Conservation Policy Act (42 U.S.C. 8279); and

(B) the relative economics of peak demand reduction and generation required to meet peak demand shall be evaluated in a neutral and objective manner.

(4) The applicable peak demand reduction goals shall provide that—

(A) load-serving entities will reduce or mitigate peak demand by a minimum percentage amount from the applicable baseline to a lower peak demand during calendar year 2012;

(B) load-serving entities will reduce or mitigate peak demand by a minimum percentage greater amount from the applicable baseline to a lower peak demand during calendar year 2015; and

(C) the minimum percentage reductions established as peak demand reduction goals shall be the

maximum reductions that are realistically achievable with an aggressive effort to deploy Smart Grid and peak demand reduction technologies and methods, including but not limited to those listed in subsection (d).

(d) PLAN.—Each load-serving entity shall prepare a peak demand reduction plan that demonstrates its ability to meet each applicable goal by any or a combination of the following options:

(1) Direct reduction in megawatts of peak demand through—

(A) energy efficiency measures (including efficient transmission wire technologies which significantly reduce line loss compared to traditional wire technology) with reliable and continued application during peak demand periods; or

(B) use of a Smart Grid.

(2) Demonstration that an amount of megawatts equal to a stated portion of the applicable goal is contractually committed to be available for peak reduction through one or more of the following:

(A) Megawatts enrolled in demand response programs.

(B) Megawatts subject to the ability of a load-serving entity to call on demand response

1 programs, smart appliances, smart electricity or
2 energy storage devices, distributed generation
3 resources on the entity's customers' premises,
4 or other measures directly capable of actively,
5 controllably, reliably, and dynamically reducing
6 peak demand (''dynamic peak management con-
7 trol'').
8 (C) Megawatts available from distributed
9 dynamic electricity or energy storage under
10 agreement with the owner of that storage.
11 (D) Megawatts committed from
12 dispatchable distributed generation dem-
13 onstrated to be reliable under peak period con-
14 ditions and in compliance with air quality regu-
15 lations.
16 (E) Megawatts available from smart appli-
17 ances and equipment with Smart Grid capa-
18 bility available for direct control by the utility
19 through agreement with the customer owning
20 the appliances or equipment or with a third
21 party pursuant to such agreements.
22 (F) Megawatts from a demonstrated and
23 assured minimum of distributed solar electric
24 generation capacity in instances where peak pe-
25 riod and peak demand conditions are directly

related to solar radiation and accompanying heat.

(3) If any of the methods listed in subparagraph (C), (D), or (E) of paragraph (2) are relied upon to meet its peak demand reduction goals, the load-serving entity must demonstrate this capability by operating a test during the applicable calendar year.

(4) Nothing in this section shall require the publication in peak demand reduction goals or in any peak demand reduction plan of any information that is confidential for competitive or other reasons or that identifies individual customers.

(e) EXISTING AUTHORITY AND REQUIREMENTS.—Nothing in this section diminishes or supersedes any authority of a State or political subdivision of a State to adopt or enforce any law or regulation respecting peak demand management, demand response, distributed energy storage, use of distributed generation, or the regulation of load-serving entities. The Commission, in consultation with States and Indian tribes having such peak management, demand response and distributed energy storage programs, shall to the maximum extent practicable, facilitate coordination between the Federal program and such State and tribal programs.

(f) RELIEF.—The Commission may, for good cause, grant relief to load-serving entities from the requirements of this section.

(g) OTHER LAWS.—Except as provided in subsections (e) and (f), no law or regulation shall relieve any person of any requirement otherwise applicable under this section.

(h) COMPLIANCE.—(1) The Commission shall within one year after the date of enactment of this Act establish a public website where the Commission will provide information and data demonstrating compliance by States, Indian tribes regional entities, and load-serving entities with this section, including the success of load-serving entities in meeting applicable peak demand reduction goals.

(2) The Commission shall, by April 1 of each year beginning in 2012, provide a report to Congress on compliance with this section and success in meeting applicable peak demand reduction goals and, as appropriate, shall make recommendations as to how to increase peak demand reduction efforts.

(3) The Commission shall note in each such report any State, political subdivision of a State, or load-serving entity that has failed to comply with this section, or is not a part of any region or group of load-serving entities serving a region that has complied with this section.

(4) The Commission shall have and exercise the authority to take reasonable steps to modify the process of establishing peak demand reduction goals and to accept adjustments to them as appropriate when sought by load-serving entities.

(i) ASSISTANCE AND FUNDING.—

(1) ASSISTANCE TO STATES AND TRIBES.—Any costs incurred by States for activities undertaken pursuant to this section shall be supported by the use of emission allowances allocated to the States' SEED Accounts or to the tribes pursuant to section 132 of this Act. To the extent that a State provides allowances to local governments within the State to implement this program, that shall be deemed a distribution of such allowances to units of local government pursuant to subsection (c)(1) of that section.

(2) FUNDING.—There are authorized to be appropriated such sums as may be necessary to the Commission, the Secretary, and the Administrator to carry out the provisions of this section.

SEC. 145. REAUTHORIZATION OF ENERGY EFFICIENCY PUBLIC INFORMATION PROGRAM TO INCLUDE SMART GRID INFORMATION.

(a) IN GENERAL.—Section 134 of the Energy Policy Act of 2005 (42 U.S.C. 15832) is amended as follows:

(1) By amending the section heading to read as follows: ''**ENERGY EFFICIENCY AND SMART GRID PUBLIC INFORMATION INITIATIVE**''.

(2) In paragraph (1) of subsection (a) by striking ''reduce energy consumption during the 4-year period beginning on the date of enactment of this Act'' and inserting ''increase energy efficiency and to adopt Smart Grid technology and practices''.

(3) In paragraph (2) of subsection (a) by striking ''benefits to consumers of reducing'' and inserting ''economic and environmental benefits to consumers and the United States of optimizing''.

(4) In subsection (a) by inserting at the beginning of paragraph (3) ''the effect of energy efficiency and Smart Grid capability in reducing energy and electricity prices throughout the economy, together with''.

(5) In subsection (a)(4) by redesignating subparagraph (D) as (E), by striking ''and'' at the end of subparagraph (C), and by inserting after subparagraph (C) the following:

''(D) purchasing and utilizing equipment that includes Smart Grid features and capability; and''.

(6) In subsection (c), by striking ''Not later than July 1, 2009,'' and inserting, ''For each year when appropriations pursuant to the authorization in this section exceed $10,000,000,''.

(7) In subsection (d) by striking ''2010'' and inserting ''2020''.

(8) In subsection (e) by striking ''2010'' and inserting ''2020''.

(b) TABLE OF CONTENTS.—The item relating to section 134 in the table of contents for the Energy Policy Act of 2005 (42 U.S.C. 15801 and following) is amended to read as follows:

''Sec. 134. Energy efficiency and Smart Grid public information initiative.''.

SEC. 146. INCLUSION OF SMART GRID FEATURES IN APPLIANCE REBATE PROGRAM.

(a) AMENDMENTS.—Section 124 of the Energy Policy Act of 2005 (42 U.S.C. 15821) is amended as follows:

(1) By amending the section heading to read as follows: ''**ENERGY EFFICIENT AND SMART APPLIANCE REBATE PROGRAM**.''.

(2) By redesignating paragraphs (4) and (5) of subsection (a) as paragraphs (5) and (6), respectively, and inserting after paragraph (3) the following:

''(4) SMART APPLIANCE.—The term 'smart appliance' means a product that the Administrator of

the Environmental Protection Agency or the Secretary of Energy has determined qualifies for such a designation in the Energy Star program pursuant to section 142 of the American Clean Energy and Security Act of 2009, or that the Secretary or the Administrator has separately determined includes the relevant Smart Grid capabilities listed in section 1301 of the Energy Independence and Security Act of 2007 (15 U.S.C. 17381).''.

(3) In subsection (b)(1) by inserting ''and smart'' after ''efficient'' and by inserting after ''products'' the first place it appears '', including products designated as being smart appliances''.

(4) In subsection (b)(3), by inserting ''the administration of'' after ''carry out''.

(5) In subsection (d), by inserting ''the administration of'' after ''carrying out'' and by inserting '', and up to 100 percent of the value of the rebates provided pursuant to this section'' before the period at the end.

(6) In subsection (e)(3), by inserting '', with separate consideration as applicable if the product is also a smart appliance,'' after ''Energy Star product'' the first place it appears and by inserting ''or smart appliance'' before the period at the end.

(7) In subsection (f), by striking "$50,000,000" through the period at the end and inserting "$100,000,000 for each fiscal year from 2010 through 2015.".

(b) TABLE OF CONTENTS.—The item relating to section 124 in the table of contents for the Energy Policy Act of 2005 (42 U.S.C. 15801 and following) is amended to read as follows:

"Sec. 124. Energy efficient and smart appliance rebate program.".

Subtitle F—Transmission Planning

SEC. 151. TRANSMISSION PLANNING.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding after section 216 the following new section:

"SEC. 216A. TRANSMISSION PLANNING.

"(a) FEDERAL POLICY.—

"(1) OBJECTIVES.—It is the policy of the United States that regional electric grid planning should facilitate the deployment of renewable and other zero-carbon energy sources for generating electricity to reduce greenhouse gas emissions while ensuring reliability, reducing congestion, ensuring cyber-security, and providing for cost-effective electricity services throughout the United States.

"(2) OPTIONS.—In addition to the policy under paragraph (1), it is the policy of the United States

that regional electric grid planning to meet these objectives should take into account all significant demand-side and supply-side options, including energy efficiency, distributed generation, renewable energy and zero-carbon electricity generation technologies, smart-grid technologies and practices, demand response, electricity storage, voltage regulation technologies, high capacity conductors with at least 25 percent greater efficiency than traditional ACSR (aluminum stranded conductors steel reinforced) conductors, superconductor technologies, underground transmission technologies, and new conventional electric transmission capacity and corridors.

''(b) PLANNING.—

''(1) PLANNING PRINCIPLES.—Not later than 1 year after the date of enactment of this section, the Commission shall adopt, after notice and opportunity for comment, national electricity grid planning principles derived from the Federal policy established under subsection (a) to be applied in ongoing and future transmission planning that may implicate interstate transmission of electricity.

''(2) REGIONAL PLANNING ENTITIES.—Not later than 3 months after the date of adoption by the Commission of national electricity grid planning

principles pursuant to paragraph (1), entities that conduct or may conduct transmission planning pursuant to State, tribal, or Federal law or regulation, including States, Indian tribes, entities designated by States and Indian tribes, Federal Power Marketing Administrations, public utility transmission providers, operators and owners, regional organizations, and electric utilities, and that are willing to incorporate the national electricity grid planning principles adopted by the Commission in their electric grid planning, shall identify themselves and the regions for which they propose to develop plans to the Commission.

"(3) COORDINATION OF REGIONAL PLANNING ENTITIES.—The Commission shall encourage regional planning entities described under paragraph (2) to cooperate and coordinate across regions and to harmonize regional electric grid planning with planning in adjacent or overlapping jurisdictions to the maximum extent feasible. The Commission shall work with States, Indian tribes, Federal Power Marketing Administrations, public utilities transmission providers, load-serving entities, transmission operators, Regional Transmission Organizations, Independent System Operators, and other organizations

to resolve any conflict or competition among proposed planning entities in order to build consensus and promote the Federal policy established under subsection (a). The Commission shall seek to ensure that planning that is consistent with the national electricity grid planning principles adopted pursuant to paragraph (1) is conducted in all regions of the United States and the territories.

"(4) RELATION TO EXISTING PLANNING POLICY.—In implementing the Federal policy established under subsection (a), the Commission shall—

"(A) incorporate any ongoing planning efforts undertaken pursuant to section 217;

"(B) consult with and invite the participation of the Secretary of Energy in relationship to the Secretary's duties pursuant to section 216; and

"(C) coordinate with the Secretaries of the Interior and Agriculture and with Indian tribes in carrying out the Secretaries' or tribal governments' existing responsibilities for the planning or siting of transmission facilities on Federal or tribal lands.

"(5) ASSISTANCE.—

"(A) IN GENERAL.—The Commission shall provide support to and participate in the regional grid planning processes conducted by regional planning entities. The Commission may provide planning resources and assistance as required or as requested by regional planning entities, including system data, cost information, system analysis, technical expertise, modeling support, dispute resolution services, and other assistance to regional planning entities, as appropriate.

"(B) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

"(6) CONFLICT RESOLUTION.—In the event that regional grid plans conflict, the Commission shall assist the regional planning entities in resolving such conflicts in order to achieve the objectives of the Federal policy established under subsection (a).

"(7) SUBMISSION OF PLANS.—The Commission shall require regional planning entities to submit initial regional electric grid plans to the Commission not later than 18 months after the date the Commission promulgates national electricity grid planning principles pursuant to paragraph (1) and to update

such plans not less than every 3 years thereafter. Regional electric grid plans should, in general, be developed from sub-regional requirements and plans, including planning input reflecting individual utility service areas. Regional plans may then in turn be combined into larger regional plans, up to interconnection-wide and national plans, as appropriate and necessary as determined by the Commission. The Commission shall review such plans for consistency with the national grid planning principles and may return a plan to one or more planning entities for further consideration, along with the Commission's own recommendations for resolution of any conflict or for improvement. To the extent practicable, all plans submitted to the Commission shall be public documents and available on the Commission's website.

"(8) MULTI-REGIONAL MEETINGS.—As regional grid plans are submitted to the Commission, the Commission may convene multi-regional meetings to discuss regional grid plan consistency and integration, including requirements for multi-regional projects, and to resolve any conflicts that emerge from such multi-regional projects. The Commission

shall provide its recommendations for eliminating any inter-regional conflicts.

"(9) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this section, the Commission shall provide a report to Congress containing the results of the initial regional grid planning process, including summaries of the adopted regional plans. The Commission shall provide an electronic version of its report on its website with links to all regional and sub-regional plans taken into account. The Commission shall note and provide its recommended resolution for any conflicts not resolved during the planning process. The Commission shall make any recommendations to Congress on the appropriate Federal role or support required to address the needs of the electric grid, including recommendations for addressing any needs that are beyond the reach of existing State, tribal, and Federal authority.".

SEC. 152. NET METERING FOR FEDERAL AGENCIES.

(a) STANDARD.—Subsection (b) of section 113 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623) is amended by adding the following new paragraph at the end thereof:

"(6) NET METERING FOR FEDERAL AGENCIES.—Each electric utility shall offer to arrange (either directly or through a third party) to make interconnection and net metering available to Federal Government agencies, offices, or facilities in accordance with the requirements of section 115(j). The standard under this paragraph shall apply only to electric utilities that sold over 4,000,000 megawatt hours of electricity in the preceding year to the ultimate consumers thereof. In the case of a standard under this paragraph, a period of 1 year after the date of the enactment of this section shall be substituted for the 2-year period referred to in other provisions of this section.".

(b) SPECIAL RULES.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding the following new subsection at the end thereof:

"(j) NET METERING FOR FEDERAL AGENCIES.—(1) The standard under paragraph (6) of section 113(b) shall require that rates and charges and contract terms and conditions for the sale of electric energy to the Federal Government or agency shall be the same as the rates and charges and contract terms and conditions that would be

applicable if the agency did not own or operate a qualified generation unit and use a net metering system.

"(2)(A) The standard under paragraph (6) of section 113(b) shall require that each electric utility shall arrange to provide to the Government office or agency that qualifies for net metering an electrical energy meter capable of net metering and measuring, to the maximum extent practicable, the flow of electricity to or from the customer, using a single meter and single register, the cost of which shall be recovered from the customer.

"(B) In a case in which it is not practicable to provide a meter under subparagraph (A), the utility (either directly or through a third party) shall, at the expense of the utility install 1 or more of those electric energy meters.

"(3)(A) The standard under paragraph (6) of section 113(b) shall require that each electric utility shall calculate the electric energy consumption for the Government office or agency using a net metering system that meets the requirements of this subsection and paragraph (6) of section 113(b) and shall measure the net electricity produced or consumed during the billing period using the metering installed in accordance with this paragraph.

"(B) If the electricity supplied by the retail electric supplier exceeds the electricity generated by the Government office or agency during the billing period, the Gov-

ernment office or agency shall be billed for the net electric energy supplied by the retail electric supplier in accordance with normal billing practices.

"(C) If electric energy generated by the Government office or agency exceeds the electric energy supplied by the retail electric supplier during the billing period, the Government office or agency shall be billed for the appropriate customer charges for that billing period and credited for the excess electric energy generated during the billing period, with the credit appearing as a kilowatt-hour credit on the bill for the following billing period.

"(D) Any kilowatt-hour credits provided to the Government office or agency as provided in this subsection shall be applied to the Government office or agency electric energy consumption on the following billing period bill (except for a billing period that ends in the next calendar year). At the beginning of each calendar year, any unused kilowatt-hour credits remaining from the preceding year will carry over to the new year.

"(4) The standard under paragraph (6) of section 113(b) shall require that each electric utility shall offer a meter and retail billing arrangement that has time-differentiated rates. The kilowatt-hour credit shall be based on the ratio representing the difference in retail rates for each time-of-use rate, or the credits shall be reflected on

the bill of the Government office or agency as a monetary credit reflecting retail rates at the time of generation of the electric energy by the customer-generator.

"(5) The standard under paragraph (6) of section 113(b) shall require that the qualified generation unit, interconnection standards, and net metering system used by the Government office or agency shall meet all applicable safety and performance and reliability standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, and the American National Standards Institute.

"(6) The standard under paragraph (6) of section 113(b) shall require that electric utilities shall not make additional charges, including standby charges, for equipment or services for safety or performance that are in addition to those necessary to meet the other standards and requirements of this subsection and paragraph (6) of section 113(b).

"(7) For purposes of this subsection and paragraph (6) of section 113(b):

"(A) The term 'Government' means any office, facility, or agency of the Federal Government.

"(B) The term 'customer-generator' means the owner or operator of a electricity generation unit.

"(C) The term 'electric generation unit' means any renewable electric generation unit that is owned, operated, or sited on a Federal Government facility.

"(D) The term 'net metering' means the process of—

"(i) measuring the difference between the electricity supplied to a customer-generator and the electricity generated by the customer-generator that is delivered to a utility at the same point of interconnection during an applicable billing period; and

"(ii) providing an energy credit to the customer-generator in the form of a kilowatt-hour credit for each kilowatt-hour of electricity produced by the customer-generator from an electric generation unit.".

(c) SAVINGS PROVISION.—If this section or a portion of this section is determined to be invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this Act.

SEC. 153. SUPPORT FOR QUALIFIED ADVANCED ELECTRIC TRANSMISSION MANUFACTURING PLANTS, QUALIFIED HIGH EFFICIENCY TRANSMISSION PROPERTY, AND QUALIFIED ADVANCED ELECTRIC TRANSMISSION PROPERTY.

(a) LOAN GUARANTEES PRIOR TO SEPTEMBER 30, 2011.—Section 1705(a) of the Energy Policy Act of 2005 (42 U.S.C. 16515(a)), as added by section 406 of the American Recovery and Reinvestment Act of 2009 (Public Law 109-58; 119 Stat. 594) is amended by adding the following new paragraph at the end thereof:

"(5) The development, construction, acquisition, retrofitting, or engineering integration of a qualified advanced electric transmission manufacturing plant or the construction of a qualified high efficiency transmission property or a qualified advanced electric transmission property (whether by construction of new facilities or the modification of existing facilities). For purposes of this paragraph:

"(A) The term 'qualified advanced electric transmission property' means any high voltage electric transmission cable, related substation, converter station, or other integrated facility that—

"(i) utilizes advanced ultra low resistance superconductive material or other ad-

vanced technology that has been determined by the Secretary of Energy as—

"(I) reasonably likely to become commercially viable within 10 years after the date of enactment of this paragraph;

"(II) capable of reliably transmitting at least 5 gigawatts of high-voltage electric energy for distances greater than 300 miles with energy losses not exceeding 3 percent of the total power transported; and

"(III) not creating an electromagnetic field;

"(ii) has been determined by an appropriate energy regulatory body, upon application, to be in the public interest and thereby eligible for inclusion in regulated rates; and

"(iii) can be located safely and economically in a permanent underground right of way not to exceed 25 feet in width.

The term 'qualified advanced electric transmission property' shall not include any property placed in service after December 31, 2016.

"(B)(i) The term 'qualified high efficiency transmission property' means any high voltage overhead electric transmission line, related substation, or other integrated facility that—

"(I) utilizes advanced conductor core technology that—

"(aa) has been determined by the Secretary of Energy as reasonably likely to become commercially viable within 10 years after the date of enactment of this paragraph;

"(bb) is suitable for use on transmission lines up to 765kV; and

"(cc) exhibits power losses at least 30 percent lower than that of transmission lines using conventional 'ACSR' conductors;

"(II) has been determined by an appropriate energy regulatory body, upon application, to be in the public interest and thereby eligible for inclusion in regulated rates; and

"(III) can be located safely and economically in a right of way not to exceed

that used by conventional 'ACSR' conductors; and

"(ii) The term 'qualified high efficiency transmission property' shall not include any property placed in service after December 31, 2016.

"(C) The term 'qualified advanced electric transmission manufacturing plant' means any industrial facility located in the United States which can be equipped, re-equipped, expanded, or established to produce in whole or in part qualified advanced electric transmission property.".

(b) ADDITIONAL LOAN GUARANTEE AUTHORITY.—Section 1703 of the Energy Policy Act of 2005 (42 U.S.C. 16513) is amended by adding the following new paragraph at the end of subsection (b):

"(12) The development, construction, acquisition, retrofitting, or engineering integration of a qualified advanced electric transmission manufacturing plant or the construction of a qualified advanced electric transmission property (whether by construction of new facilities or the modification of existing facilities). For purposes of this paragraph, the terms 'qualified advanced electric transmission

property' and 'qualified advanced electric transmission manufacturing plant' have the meanings provided by section 1705(a)(5).''.

(c) GRANTS.—The Secretary of Energy is authorized to provide grants for up to 50 percent of costs incurred in connection with the development, construction, acquisition of components for, or engineering of a qualified advanced electric transmission property defined in paragraph (5) of section 1705(a) of the Energy Policy Act of 2005 (42 U.S.C. 16515(a)). Such grants may only be made to the first project which qualifies under that paragraph. There are authorized to be appropriated for purposes of this subsection not more than $100,000,000 for fiscal year 2010. The United States shall take no equity or other ownership interest in the qualified advanced electric transmission manufacturing plant or qualified advanced electric transmission property for which funding is provided under this subsection.

Subtitle G—Technical Corrections to Energy Laws

SEC. 161. TECHNICAL CORRECTIONS TO ENERGY INDEPENDENCE AND SECURITY ACT OF 2007.

(a) TITLE III—ENERGY SAVINGS THROUGH IMPROVED STANDARDS FOR APPLIANCE AND LIGHTING.—(1) Section 325(u) of the Energy Policy and Conservation

Act (42 U.S.C. 6295(u)) (as amended by section 301(c) of the Energy Independence and Security Act of 2007 (121 Stat. 1550)) is amended—

(A) by redesignating paragraph (7) as paragraph (4); and

(B) in paragraph (4) (as so redesignated), by striking ''supplies is'' and inserting ''supply is''.

(2) Section 302 of the Energy Independence and Security Act of 2007 (121 Stat. 1551)) is amended—

(A) in subsection (a), by striking ''end of the paragraph'' and inserting ''end of subparagraph (A)''; and

(B) in subsection (b), by striking ''6313(a)'' and inserting ''6314(a)''.

(3) Section 343(a)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6313(a)(1)) (as amended by section 302(b) of the Energy Independence and Security Act of 2007 (121 Stat. 1551)) is amended—

(A) by striking ''TEST PROCEDURES'' and all that follows through ''At least once'' and inserting ''TEST PROCEDURES.—At least once''; and

(B) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively (and by moving

the margins of such subparagraphs 2 ems to the left).

(4) Section 342(a)(6) of the Energy Policy and Conservation Act (42 U.S.C. 6313(a)(6)) (as amended by section 305(b)(2) of the Energy Independence and Security Act of 2007 (121 Stat. 1554)) is amended—

(A) in subparagraph (B)—

(i) by striking ''If the Secretary'' and inserting the following:

''(i) IN GENERAL.—If the Secretary'';

(ii) by striking ''clause (ii)(II)'' and inserting ''subparagraph (A)(ii)(II)'';

(iii) by striking ''clause (i)'' and inserting ''subparagraph (A)(i)''; and

(iv) by adding at the end the following:

''(ii) FACTORS.—In determining whether a standard is economically justified for the purposes of subparagraph (A)(ii)(II), the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed the burden of the proposed standard by, to the maximum extent practicable, considering—

1 "(I) the economic impact of the
2 standard on the manufacturers and
3 on the consumers of the products sub-
4 ject to the standard;
5 "(II) the savings in operating
6 costs throughout the estimated aver-
7 age life of the product in the type (or
8 class) compared to any increase in the
9 price of, or in the initial charges for,
10 or maintenance expenses of, the prod-
11 ucts that are likely to result from the
12 imposition of the standard;
13 "(III) the total projected quan-
14 tity of energy savings likely to result
15 directly from the imposition of the
16 standard;
17 "(IV) any lessening of the utility
18 or the performance of the products
19 likely to result from the imposition of
20 the standard;
21 "(V) the impact of any lessening
22 of competition, as determined in writ-
23 ing by the Attorney General, that is
24 likely to result from the imposition of
25 the standard;

"(VI) the need for national energy conservation; and

"(VII) other factors the Secretary considers relevant.

"(iii) ADMINISTRATION.—

"(I) ENERGY USE AND EFFICIENCY.—The Secretary may not prescribe any amended standard under this paragraph that increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product.

"(II) UNAVAILABILITY.—

"(aa) IN GENERAL.—The Secretary may not prescribe an amended standard under this subparagraph if the Secretary finds (and publishes the finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (in-

cluding reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States at the time of the finding of the Secretary.

"(bb) OTHER TYPES OR CLASSES.—The failure of some types (or classes) to meet the criterion established under this subclause shall not affect the determination of the Secretary on whether to prescribe a standard for the other types or classes."; and

(B) in subparagraph (C)(iv), by striking "An amendment prescribed under this subsection" and inserting "Notwithstanding subparagraph (D), an amendment prescribed under this subparagraph".

(5) Section 342(a)(6)(B)(iii) of the Energy Policy and Conservation Act (as added by section 306(c) of the Energy Independence and Security Act of 2007) is transferred and redesignated as clause (vi) of section 342(a)(6)(C) of the Energy Policy and Conservation Act

(as amended by section 305(b)(2) of the Energy Independence and Security Act of 2007).

(6) Section 340 of the Energy Policy and Conservation Act (42 U.S.C. 6311) (as amended by sections 312(a)(2) and 314(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1564, 1569)) is amended by redesignating paragraphs (22) and (23) (as added by section 314(a) of that Act) as paragraphs (23) and (24), respectively.

(7) Section 345 of the Energy Policy and Conservation Act (42 U.S.C. 6316) (as amended by section 312(e) of the Energy Independence and Security Act of 2007 (121 Stat. 1567)) is amended—

(A) by striking ''subparagraphs (B) through (G)'' each place it appears and inserting ''subparagraphs (B), (C), (D), (I), (J), and (K)'';

(B) by striking ''part A'' each place it appears and inserting ''part B''; and

(C) in subsection (h)(3), by striking ''section 342(f)(3)'' and inserting ''section 342(f)(4)''.

(8) Section 340(13) of the Energy Policy and Conservation Act (42 U.S.C. 6311(13)) (as amended by section 313(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1568)) is amended—

(A) by striking subparagraphs (A) and (B) and inserting the following:

"(A) IN GENERAL.—The term 'electric motor' means any motor that is—

"(i) a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1-1987; or

"(ii) a motor incorporating the design elements described in clause (i), but is configured to incorporate one or more of the following variations—

"(I) U-frame motor;

"(II) NEMA Design C motor;

"(III) close-coupled pump motor;

"(IV) footless motor;

"(V) vertical solid shaft normal thrust motor (as tested in a horizontal configuration);

"(VI) 8-pole motor; or

"(VII) poly-phase motor with a voltage rating of not more than 600 volts (other than 230 volts or 460 volts, or both, or can be operated on 230 volts or 460 volts, or both)."; and

(B) by redesignating subparagraphs (C) through (I) as subparagraphs (B) through (H), respectively.

(9)(A) Section 342(b) of the Energy Policy and Conservation Act (42 U.S.C. 6313(b)) is amended—

(i) in paragraph (1), by striking "paragraph (2)" and inserting "paragraph (3)";

(ii) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4);

(iii) by inserting after paragraph (1) the following:

"(2) STANDARDS EFFECTIVE BEGINNING DECEMBER 19, 2010.—

"(A) IN GENERAL.—Except for definite purpose motors, special purpose motors, and those motors exempted by the Secretary under paragraph (3) and except as provided for in subparagraphs (B), (C), and (D), each electric motor manufactured with power ratings from 1 to 200 horsepower (alone or as a component of another piece of equipment) on or after Decem-

ber 19, 2010, shall have a nominal full load efficiency of not less than the nominal full load efficiency described in NEMA MG-1 (2006) Table 12-12.

"(B) FIRE PUMP ELECTRIC MOTORS.—Except for those motors exempted by the Secretary under paragraph (3), each fire pump electric motor manufactured with power ratings from 1 to 200 horsepower (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency that is not less than the nominal full load efficiency described in NEMA MG-1 (2006) Table 12-11.

"(C) NEMA DESIGN B ELECTRIC MOTORS.—Except for those motors exempted by the Secretary under paragraph (3), each NEMA Design B electric motor with power ratings of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency of not less than the nominal full load efficiency described in NEMA MG-1 (2006) Table 12-11.

"(D) MOTORS INCORPORATING CERTAIN DESIGN ELEMENTS.—Except for those motors exempted by the Secretary under paragraph (3), each electric motor described in section 340(13)(A)(ii) manufactured with power ratings from 1 to 200 horsepower (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency of not less than the nominal full load efficiency described in NEMA MG-1 (2006) Table 12-11."; and

(iv) in paragraph (3) (as redesignated by clause (ii)), by striking "paragraph (1)" each place it appears in subparagraphs (A) and (D) and inserting "paragraphs (1) and (2)".

(B) Section 313 of the Energy Independence and Security Act of 2007 (121 Stat. 1568) is repealed.

(C) The amendments made by—

(i) subparagraph (A) shall take effect on December 19, 2010; and

(ii) subparagraph (B) shall take effect on December 19, 2007.

(10) Section 321(30)(D)(i)(III) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)(D)(i)(III)) (as amended by section 321(a)(1)(A) of the Energy Independ-

ence and Security Act of 2007 (121 Stat. 1574)) is amended by inserting before the semicolon the following: ''or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens''.

(11) Section 321(30)(T) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)(T) (as amended by section 321(a)(1)(B) of the Energy Independence and Security Act of 2007 (121 Stat. 1574)) is amended—

(A) in clause (i)—

(i) by striking the comma after ''household appliance'' and inserting ''and''; and

(ii) by striking ''and is sold at retail,''; and

(B) in clause (ii), by inserting ''when sold at retail,'' before ''is designated''.

(12) Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) (as amended by sections 321(a)(3)(A) and 322(b) of the Energy Independence and Security Act of 2007 (121 Stat. 1577, 1588)) is amended by striking subsection (i) and inserting the following:

''(i) GENERAL SERVICE FLUORESCENT LAMPS, GENERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE BASE INCANDESCENT LAMPS, CANDELABRA BASE INCANDESCENT LAMPS, AND INCANDESCENT REFLECTOR LAMPS.—

''(1) ENERGY EFFICIENCY STANDARDS.—

"(A) IN GENERAL.—Each of the following general service fluorescent lamps, general service incandescent lamps, intermediate base incandescent lamps, candelabra base incandescent lamps, and incandescent reflector lamps manufactured after the effective date specified in the tables listed in this subparagraph shall meet or exceed the following lamp efficacy, new maximum wattage, and CRI standards:

"FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
4-foot medium bi-pin	>35 W	69	75.0	36
	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
	≤100 W	45	80.0	18

"INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

"GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rated Wattage	Minimum Rated Lifetime	Effective Date
1490–2600	72	1,000 hrs	1/1/2012
1050–1489	53	1,000 hrs	1/1/2013
750–1049	43	1,000 hrs	1/1/2014
310–749	29	1,000 hrs	1/1/2014

"MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rated Wattage	Minimum Rated Lifetime	Effective Date
1118–1950	72	1,000 hrs	1/1/2012
788–1117	53	1,000 hrs	1/1/2013
563–787	43	1,000 hrs	1/1/2014
232–562	29	1,000 hrs	1/1/2014

"(B) APPLICATION.—

"(i) APPLICATION CRITERIA.—This subparagraph applies to each lamp that—

"(I) is intended for a general service or general illumination application (whether incandescent or not);

"(II) has a medium screw base or any other screw base not defined in ANSI C81.61–2006;

"(III) is capable of being operated at a voltage at least partially within the range of 110 to 130 volts; and

"(IV) is manufactured or imported after December 31, 2011.

"(ii) REQUIREMENT.—For purposes of this paragraph, each lamp described in clause (i) shall have a color rendering index that is greater than or equal to—

"(I) 80 for nonmodified spectrum lamps; or

"(II) 75 for modified spectrum lamps.

"(C) CANDELABRA INCANDESCENT LAMPS AND INTERMEDIATE BASE INCANDESCENT LAMPS.—

"(i) CANDELABRA BASE INCANDESCENT LAMPS.—Effective beginning January 1, 2012, a candelabra base incandescent lamp shall not exceed 60 rated watts.

"(ii) INTERMEDIATE BASE INCANDESCENT LAMPS.—Effective beginning January 1, 2012, an intermediate base incandescent lamp shall not exceed 40 rated watts.

"(D) EXEMPTIONS.—

"(i) STATUTORY EXEMPTIONS.—The standards specified in subparagraph (A) shall not apply to the following types of incandescent reflector lamps:

"(I) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps.

"(II) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps.

"(III) R20 incandescent reflector lamps rated 45 watts or less.

"(ii) ADMINISTRATIVE EXEMPTIONS.—

"(I) PETITION.—Any person may petition the Secretary for an exemption for a type of general service lamp from the requirements of this subsection.

"(II) CRITERIA.—The Secretary may grant an exemption under subclause (I) only to the extent that the Secretary finds, after a hearing and opportunity for public comment, that it is not technically feasible to serve a specialized lighting application (such as a military, medical, public safety, or certified historic lighting application) using a lamp that meets the requirements of this subsection.

"(III) ADDITIONAL CRITERION.—To grant an exemption for a product

under this clause, the Secretary shall include, as an additional criterion, that the exempted product is unlikely to be used in a general service lighting application.

"(E) EXTENSION OF COVERAGE.—

"(i) PETITION.—Any person may petition the Secretary to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps.

"(ii) INCREASED SALES OF EXEMPTED LAMPS.—The petition shall include evidence that the availability or sales of exempted incandescent lamps have increased significantly since the date on which the standards on general service incandescent lamps were established.

"(iii) CRITERIA.—The Secretary shall grant a petition under clause (i) if the Secretary finds that—

"(I) the petition presents evidence that demonstrates that commercial availability or sales of exempted incandescent lamp types have in-

creased significantly since the standards on general service lamps were established and likely are being widely used in general lighting applications; and

"(II) significant energy savings could be achieved by covering exempted products, as determined by the Secretary based in part on sales data provided to the Secretary from manufacturers and importers.

"(iv) NO PRESUMPTION.—The grant of a petition under this subparagraph shall create no presumption with respect to the determination of the Secretary with respect to any criteria under a rulemaking conducted under this section.

"(v) EXPEDITED PROCEEDING.—If the Secretary grants a petition for a lamp shape or base under this subparagraph, the Secretary shall—

"(I) conduct a rulemaking to determine standards for the exempted lamp shape or base; and

"(II) complete the rulemaking not later than 18 months after the date on which notice is provided granting the petition.

"(F) EFFECTIVE DATES.—

"(i) IN GENERAL.—In this paragraph, except as otherwise provided in a table contained in subparagraph (A) or in clause (ii), the term 'effective date' means the last day of the month specified in the table that follows October 24, 1992.

"(ii) SPECIAL EFFECTIVE DATES.—

"(I) ER, BR, AND BPAR LAMPS.—The standards specified in subparagraph (A) shall apply with respect to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007.

"(II) LAMPS BETWEEN 2.25–2.75 INCHES IN DIAMETER.—The stand-

ards specified in subparagraph (A) shall apply with respect to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007.

"(2) COMPLIANCE WITH EXISTING LAW.—Notwithstanding section 332(a)(5) and section 332(b), it shall not be unlawful for a manufacturer to sell a lamp that is in compliance with the law at the time the lamp was manufactured.

"(3) RULEMAKING BEFORE OCTOBER 24, 1995.—

"(A) IN GENERAL.—Not later than 36 months after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on October 24, 1992, to determine whether the standards established under paragraph (1) should be amended.

"(B) ADMINISTRATION.—The rule shall contain the amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date on which the final rule is published.

"(4) RULEMAKING BEFORE OCTOBER 24, 2000.—

"(A) IN GENERAL.—Not later than 8 years after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than 9 years and 6 months after October 24, 1992, to determine whether the standards in effect for fluorescent lamps and incandescent lamps should be amended.

"(B) ADMINISTRATION.—The rule shall contain the amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date on which the final rule is published.

"(5) RULEMAKING FOR ADDITIONAL GENERAL SERVICE FLUORESCENT LAMPS.—

"(A) IN GENERAL.—Not later than the end of the 24-month period beginning on the

date labeling requirements under section 324(a)(2)(C) become effective, the Secretary shall—

"(i) initiate a rulemaking procedure to determine whether the standards in effect for fluorescent lamps and incandescent lamps should be amended so that the standards would be applicable to additional general service fluorescent lamps; and

"(ii) publish, not later than 18 months after initiating the rulemaking, a final rule including the amended standards, if any.

"(B) ADMINISTRATION.—The rule shall provide that the amendment shall apply to products manufactured after a date which is 36 months after the date on which the rule is published.

"(6) STANDARDS FOR GENERAL SERVICE LAMPS.—

"(A) RULEMAKING BEFORE JANUARY 1, 2014.—

"(i) IN GENERAL.—Not later than January 1, 2014, the Secretary shall ini-

tiate a rulemaking procedure to determine whether—

"(I) standards in effect for general service lamps should be amended; and

"(II) the exclusions for certain incandescent lamps should be maintained or discontinued based, in part, on excluded lamp sales collected by the Secretary from manufacturers.

"(ii) SCOPE.—The rulemaking—

"(I) shall not be limited to incandescent lamp technologies; and

"(II) shall include consideration of a minimum standard of 45 lumens per watt for general service lamps.

"(iii) AMENDED STANDARDS.—If the Secretary determines that the standards in effect for general service lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published.

"(iv) PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—

"(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

"(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

"(v) BACKSTOP REQUIREMENT.—If the Secretary fails to complete a rulemaking in accordance with clauses (i) through (iv) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, effective beginning January 1, 2020, the Secretary shall prohibit the manufacture of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt.

"(vi) STATE PREEMPTION.—Neither section 327(c) nor any other provision of law shall preclude California or Nevada from adopting, effective beginning on or after January 1, 2018—

"(I) a final rule adopted by the Secretary in accordance with clauses (i) through (iv);

"(II) if a final rule described in subclause (I) has not been adopted, the backstop requirement under clause (v); or

"(III) in the case of California, if a final rule described in subclause (I) has not been adopted, any California regulations relating to these covered products adopted pursuant to State statute in effect as of the date of enactment of the Energy Independence and Security Act of 2007.

"(B) RULEMAKING BEFORE JANUARY 1, 2020.—

"(i) IN GENERAL.—Not later than January 1, 2020, the Secretary shall ini-

1 tiate a rulemaking procedure to determine
2 whether—
3 "(I) standards in effect for gen-
4 eral service lamps should be amended;
5 and
6 "(II) the exclusions for certain
7 incandescent lamps should be main-
8 tained or discontinued based, in part,
9 on excluded lamp sales data collected
10 by the Secretary from manufacturers.
11 "(ii) SCOPE.—The rulemaking shall
12 not be limited to incandescent lamp tech-
13 nologies.
14 "(iii) AMENDED STANDARDS.—If the
15 Secretary determines that the standards in
16 effect for general service lamps should be
17 amended, the Secretary shall publish a
18 final rule not later than January 1, 2022,
19 with an effective date that is not earlier
20 than 3 years after the date on which the
21 final rule is published.
22 "(iv) PHASED-IN EFFECTIVE
23 DATES.—The Secretary shall consider
24 phased-in effective dates under this sub-
25 paragraph after considering—

"(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

"(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

"(7) FEDERAL ACTIONS.—

"(A) COMMENTS OF SECRETARY.—

"(i) IN GENERAL.—With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 346, the Secretary shall inform any Federal entity proposing actions that would adversely impact the energy consumption or energy efficiency of the lamp of the energy conservation consequences of the action.

"(ii) CONSIDERATION.—The Federal entity shall carefully consider the comments of the Secretary.

"(B) AMENDMENT OF STANDARDS.—Notwithstanding section 325(n)(1), the Secretary

shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if the action is warranted as a result of other Federal action (including restrictions on materials or processes) that would have the effect of either increasing the energy use or decreasing the energy efficiency of the product.

"(8) COMPLIANCE.—

"(A) IN GENERAL.—Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 346, the effective date of standards established pursuant to that section, each manufacturer of a product to which the standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type.

"(B) CONTENTS.—The report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period.

"(C) OTHER LAMP TYPES.—With respect to lamp types that are not manufactured during the 12-month period preceding the date on which the standards become effective, the report shall—

"(i) be filed with the Secretary not later than the date that is 12 months after the date on which manufacturing is commenced; and

"(ii) include the lumen output and wattage consumption for each such lamp type as an average of measurements taken during the 12-month period.".

(13) Section 325(l)(4)(A) of the Energy Policy and Conservation Act (42 U.S.C. 6295(l)(4)(A)) (as amended by section 321(a)(3)(B) of the Energy Independence and Security Act of 2007 (121 Stat. 1581)) is amended by striking "only".

(14) Section 327(b)(1)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6297(b)(1)(B)) (as amended by section 321(d)(3) of the Energy Independence and Security Act of 2007 (121 Stat. 1585)) is amended—

(A) in clause (i), by inserting "and" after the semicolon at the end;

(B) in clause (ii), by striking "; and" and inserting a period; and

(C) by striking clause (iii).

(15) Section 321(e) of the Energy Independence and Security Act of 2007 (121 Stat. 1586) is amended—

(A) in the matter preceding paragraph (1), by striking "is amended" and inserting "(as amended by section 306(b)) is amended"; and

(B) by striking paragraphs (1) and (2) and inserting the following:

"(1) in paragraph (5), by striking 'or' after the semicolon at the end;

"(2) in paragraph (6), by striking the period at the end and inserting '; or'; and".

(16) Section 332(a) of the Energy Policy and Conservation Act (42 U.S.C. 6302(a)) (as amended by section 321(e) of the Energy Independence and Security Act of 2007 (121 Stat. 1586)) is amended by redesignating the second paragraph (6) as paragraph (7).

(17) Section 321(30)(C)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)(C)(ii)) (as amended by section 322(a)(1)(B) of the Energy Independence and Security Act of 2007 (121 Stat. 1587)) is amended by inserting a period after "40 watts or higher".

(18) Section 322(b) of the Energy Independence and Security Act of 2007 (121 Stat. 1588)) is amended by striking ''6995(i)'' and inserting ''6295(i)''.

(19) Section 327(c) of the Energy Policy and Conservation Act (42 U.S.C. 6297(c)) (as amended by sections 324(f) of the Energy Independence and Security Act of 2007 (121 Stat. 1594)) is amended—

(A) in paragraph (6), by striking ''or'' after the semicolon at the end;

(B) in paragraph (8)(B), by striking ''and'' after the semicolon at the end;

(C) in paragraph (9)—

(i) by striking ''except that—'' and all that follows through ''if the Secretary fails to issue'' and inserting ''except that if the Secretary fails to issue'';

(ii) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively (and by moving the margins of such subparagraphs 2 ems to the left); and

(iii) by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

"(10) is a regulation for general service lamps that conforms with Federal standards and effective dates;

"(11) is an energy efficiency standard for general service lamps enacted into law by the State of Nevada prior to December 19, 2007, if the State has not adopted the Federal standards and effective dates pursuant to subsection (b)(1)(B)(ii); or".

(20) Section 325(b) of the Energy Independence and Security Act of 2007 (121 Stat. 1596)) is amended by striking "6924(c)" and inserting "6294(c)".

(b) TITLE IV—ENERGY SAVINGS IN BUILDINGS AND INDUSTRY.—(1) Section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061) is amended—

(A) in paragraph (2), by striking "484" and inserting "494"; and

(B) in paragraph (13), by striking "Agency" and inserting "Administration".

(2) Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) (as amended by section 411(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1600)) is amended by striking 1 of the 2 periods at the end of paragraph (5).

(3) Section 305(a)(3)(D)(i) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)(3)(D)(i)) (as amended by section 433(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1612)) is amended—

(A) in subclause (I)—

(i) by striking ''in fiscal year 2003 (as measured by Commercial Buildings Energy Consumption Survey or Residential Energy Consumption Survey data from the Energy Information Agency'' and inserting ''as measured by the calendar year 2003 Commercial Buildings Energy Consumption Survey or the calendar year 2005 Residential Energy Consumption Survey data from the Energy Information Administration''; and

(ii) in the table at the end, by striking **''Fiscal Year''** and inserting **''Calendar Year''**; and

(B) in subclause (II)—

(i) by striking ''(II) Upon petition'' and inserting the following:

''(II) DOWNWARD ADJUSTMENT OF NUMERIC REQUIREMENT.—

''(aa) IN GENERAL.—On petition''; and

(ii) by striking the last sentence and inserting the following:

"(bb) EXCEPTIONS TO REQUIREMENT FOR CONCURRENCE OF SECRETARY.—

"(AA) IN GENERAL.—The requirement to petition and obtain the concurrence of the Secretary under this subclause shall not apply to any Federal building with respect to which the Administrator of General Services is required to transmit a prospectus to Congress under section 3307 of title 40, United States Code, or to any other Federal building designed, constructed, or renovated by the Administrator if the Administrator certifies, in writing, that meeting the applicable numeric requirement under subclause (I) with respect to

the Federal building would be technically impracticable in light of the specific functional needs for the building.

"(BB) ADJUSTMENT.—In the case of a building described in subitem (AA), the Administrator may adjust the applicable numeric requirement of subclause (I) downward with respect to the building.".

(4) Section 436(c)(3) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17092(c)(3)) is amended by striking "474" and inserting "494".

(5) Section 440 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17096) is amended by striking "and 482".

(6) Section 373(c) of the Energy Policy and Conservation Act (42 U.S.C. 6343(c)) (as amended by section 451(a) of the Energy Independence and Security Act of 2007 (121 Stat. 1628)) is amended by striking "Administrator" and inserting "Secretary".

(c) DATE OF ENACTMENT.—Section 1302 of the Energy Independence and Security Act of 2007 (42 U.S.C.

17382) is amended in the first sentence by striking ''enactment'' and inserting ''the date of enactment of this Act''.

(d) REFERENCE.—Section 1306(c)(3) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17386(c)(3)) is amended by striking ''section 1307 (paragraph (17) of section 111(d) of the Public Utility Regulatory Policies Act of 1978)'' and inserting ''paragraph (19) of section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))''.

(e) EFFECTIVE DATE.—This section and the amendments made by this section take effect as if included in the Energy Independence and Security Act of 2007 (Public Law 110–140; 121 Stat. 1492).

SEC. 162. TECHNICAL CORRECTIONS TO ENERGY POLICY ACT OF 2005.

(a) TITLE I—ENERGY EFFICIENCY.—Section 325(g)(8)(C)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6295(g)(8)(C)(ii)) (as added by section 135(c)(2)(B) of the Energy Policy Act of 2005) is amended by striking ''20°F'' and inserting ''−20°F''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section take effect as if included in the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 594).

Subtitle H—Energy and Efficiency Centers and Research

SEC. 171. ENERGY INNOVATION HUBS.

(a) PURPOSE.—The Secretary shall carry out a program to establish Energy Innovation Hubs to enhance the Nation's economic, environmental, and energy security by promoting commercial application of clean, indigenous energy alternatives to oil and other fossil fuels, reducing greenhouse gas emissions, and ensuring that the United States maintains a technological lead in the development and commercial application of state-of-the-art energy technologies. To achieve these purposes the program shall—

(1) leverage the expertise and resources of the university and private research communities, industry, venture capital, national laboratories, and other participants in energy innovation to support cross-disciplinary research and development in areas not being served by the private sector in order to develop and transfer innovative clean energy technologies into the marketplace;

(2) expand the knowledge base and human capital necessary to transition to a low-carbon economy; and

(3) promote regional economic development by cultivating clusters of clean energy technology firms,

private research organizations, suppliers, and other complementary groups and businesses.

(b) DEFINITIONS.—For purposes of this section:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act (as added by section 311 of this Act).

(2) CLEAN ENERGY TECHNOLOGY.—The term ''clean energy technology'' means a technology that—

(A) produces energy from solar, wind, geothermal, biomass, tidal, wave, ocean, and other renewable energy resources (as such term is defined in section 610 of the Public Utility Regulatory Policies Act of 1978);

(B) more efficiently transmits, distributes, or stores energy;

(C) enhances energy efficiency for buildings and industry, including combined heat and power;

(D) enables the development of a Smart Grid (as described in section 1301 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17381)), including integration of renewable energy resources and distributed gen-

eration, demand response, demand side management, and systems analysis;

(E) produces an advanced or sustainable material with energy or energy efficiency applications;

(F) enhances water security through improved water management, conservation, distribution, and end use applications; or

(G) improves energy efficiency for transportation, including electric vehicles.

(3) CLUSTER.—The term ''cluster'' means a concentration of firms directly involved in the research, development, finance, and commercialization of clean energy technologies whose geographic proximity facilitates utilization and sharing of skilled human resources, infrastructure, research facilities, educational and training institutions, venture capital, and input suppliers.

(4) HUB.—The term ''Hub'' means an Energy Innovation Hub established in accordance with this section.

(5) PROJECT.—The term ''project'' means an activity with respect to which a Hub provides support under subsection (e).

(6) QUALIFYING ENTITY.—The term ''qualifying entity'' means each of the following:

(A) A research university.

(B) A State or Federal institution with a focus on the advancement of clean energy technologies.

(C) A nongovernmental organization with research or commercialization expertise in clean energy technology development.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(8) TECHNOLOGY DEVELOPMENT FOCUS.—The term ''technology development focus'' means the unique technology development areas in which a Hub will specialize, and may include solar electricity, fuels from solar energy, batteries and energy storage, electricity grid systems and devices, energy efficient building systems and design, advanced materials, modeling and simulation, and other clean energy technology development areas designated by the Secretary.

(9) TRANSLATIONAL RESEARCH.—The term ''translational research'' means coordination of basic or applied research with technical and commercial applications to enable promising discoveries or inven-

tions to attract investment sufficient for market penetration and diffusion.

(10) VINTAGE YEAR.—The term ''vintage year'' has the meaning given that term in section 700 of the Clean Air Act (as added by section 312 of this Act).

(c) ROLE OF THE SECRETARY.—The Secretary shall—

(1) have ultimate responsibility for, and oversight of, all aspects of the program under this section;

(2) provide for the distribution of allowances allocated under section 782(h)(1) of the Clean Air Act (as added by section 321 of this Act) to support the establishment of 8 Hubs, each with a unique designated technology development focus, pursuant to this section;

(3) coordinate the innovation activities of Hubs with those occurring through other Department of Energy entities, including the National Laboratories, the Advanced Research Projects Agency—Energy, and Energy Frontier Research Collaborations, and within industry, including by annually—

(A) issuing guidance regarding national energy research and development priorities and strategic objectives; and

(B) convening a conference of staff of the Department of Energy and representatives from such other entities to share research results, program plans, and opportunities for collaboration.

(d) ENTITIES ELIGIBLE FOR SUPPORT.—A consortium shall be eligible to receive allowances to support the establishment of a Hub under this section if—

(1) it is composed of—

(A) 2 research universities with a combined annual research budget of $500,000,000; and

(B) 1 or more additional qualifying entities;

(2) its members have established a binding agreement that documents—

(A) the structure of the partnership agreement;

(B) a governance and management structure to enable cost-effective implementation of the program;

(C) an intellectual property management policy;

(D) a conflicts of interest policy consistent with subsection (e)(4);

(E) an accounting structure that meets the requirements of the Department of Energy and can be audited under subsection (f)(5); and

(F) that it has an Advisory Board consistent with subsection (e)(3);

(3) it receives financial contributions from States, consortium participants, or other non-Federal sources, to be used to support project awards pursuant to subsection (e);

(4) it is part of an existing cluster or demonstrates high potential to develop a new cluster; and

(5) it operates as a nonprofit organization.

(e) ENERGY INNOVATION HUBS.—

(1) ROLE.—Hubs receiving allowances under this section shall support translational research activities leading to commercial application of clean energy technologies, in accordance with the purposes of this section, through issuance of awards to projects managed by qualifying entities and other entities

meeting the Hub's project criteria, including national laboratories. Each such Hub shall—

(A) develop and publish for public review and comment proposed plans, programs, project selection criteria, and terms for individual project awards under this subsection;

(B) submit an annual report to the Secretary summarizing the Hub's activities, organizational expenditures, and Board members, which shall include a certification of compliance with conflict of interest policies and a description of each project in the research portfolio;

(C) establish policies—

(i) regarding intellectual property developed as a result of Hub awards and other forms of technology support that encourage individual ingenuity and invention while speeding technology transfer and facilitating the establishment of rapid commercialization pathways;

(ii) to prevent resources provided to the Hub from being used to displace private sector investment otherwise likely to occur, including investment from private

sector entities that are members of the consortium;

(iii) to facilitate the participation of private investment firms or other private entities that invest in clean energy technologies to perform due diligence on award proposals, to participate in the award review process, and to provide guidance to projects supported by the Hub; and

(iv) to facilitate the participation of entrepreneurs with a demonstrated history of developing and commercializing clean energy technologies;

(D) oversee project solicitations, review proposed projects, and select projects for awards; and

(E) monitor project implementation.

(2) DISTRIBUTION OF AWARDS BY HUBS.—A Hub shall distribute awards under this subsection to support clean energy technology projects conducting translational research and related activities, provided that at least 50 percent of such support shall be provided to projects related to the Hub's technology development focus.

(3) ADVISORY BOARDS.—

(A) IN GENERAL.—Each Hub shall establish an Advisory Board, the members of which shall have extensive and relevant scientific, technical, industry, financial, or research management expertise. The Advisory Board shall review the Hub's proposed plans, programs, project selection criteria, and projects and shall ensure that projects selected for awards meet the conflict of interest policies of the Hub. Advisory Board members other than those representing consortium members shall serve for no more than 3 years. All Advisory Board members shall comply with the Hub's conflict of interest policies and procedures.

(B) MEMBERS.—Each Advisory Board shall consist of—

(i) 5 members selected by the consortium's research universities;

(ii) 2 members selected by the consortium's other qualifying entities;

(iii) 2 members selected at large by other Advisory Board members to represent the entrepreneur and venture capital communities; and

(iv) 1 member appointed by the Secretary.

(D) COMPENSATION.—Members of an Advisory Board may receive reimbursement for travel expenses and a reasonable stipend.

(4) CONFLICT OF INTEREST.—

(A) PROCEDURES.—Hubs shall establish procedures to ensure that any employee or consortia designee for Hub activities who serves in a decisionmaking capacity shall—

(i) disclose any financial interests in, or financial relationships with, applicants for or recipients of awards under this subsection, including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) recuse himself or herself from any funding decision for projects in which he or she has a personal financial interest.

(B) DISQUALIFICATION AND REVOCATION.—The Secretary may disqualify an application or revoke allowances distributed to the Hub or awards provided under this subsection, if cognizant officials of the Hub fail to comply

with procedures required under subparagraph (A).

(f) DISTRIBUTION OF ALLOWANCES TO ENERGY INNOVATION HUBS.—

(1) DISTRIBUTION OF ALLOWANCES.—Not later than September 30 of 2011 and each calendar year thereafter through 2049, the Secretary shall, in accordance with the requirements of this section, distribute to eligible consortia allowances allocated for the following vintage year under section 782(h)(1) of the Clean Air Act (as added by section 321 of this Act). Not less than 10 percent and not more than 30 percent of the allowances available for distribution in any given year shall be distributed to support any individual Hub under this section.

(2) SELECTION AND SCHEDULE.—Allowances to support the establishment of a Hub shall be distributed to eligible consortia (as defined in subsection (d)) selected through a competitive process. Not later than 120 days after the date of enactment of this Act, the Secretary shall solicit proposals from eligible consortia to establish Hubs, which shall be submitted not later than 180 days after the date of enactment of this Act. The Secretary shall select the program consortia not later than 270 days after the

date of enactment of this Act. For at least 3 awards to consortia under this section, the Secretary shall give special consideration to applications in which 1 or more of the institutions under subsection (d)(1)(A) are 1890 Land Grant Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7061)), Predominantly Black Institutions (as defined in section 318 of the Higher Education Act of 1965 (20 U.S.C. 1059e)), Tribal Colleges or Universities (as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)), or Hispanic Serving Institutions (as defined in section 318 of the Higher Education Act of 1965 (20 U.S.C. 1059e)).

(3) AMOUNT AND TERM OF AWARDS.—For each Hub selected to receive an award under this subsection, the Secretary shall define a quantity of allowances that shall be distributed to such Hub each year for an initial period not to exceed 5 years. The Secretary may extend the term of such award by up to 5 additional years, and a Hub may compete to receive an increase in the quantity of allowances per year that it shall receive during any such extension. A Hub shall be eligible to compete for a new award

after the expiration of the term of any award, including any extension of such term, under this subsection.

(4) USE OF ALLOWANCES.—Allowances distributed under this section shall be used exclusively to support project awards pursuant to subsection (e)(1) and (2), provided that a Hub may use not more than 10 percent of the value of such allowances for its administrative expenses related to making such awards. Allowances distributed under this section shall not be used for construction of new buildings or facilities for Hubs, and construction of new buildings or facilities shall not be considered as part of the non-Federal share of a cost sharing agreement under this section.

(5) AUDIT.—Each Hub shall conduct, in accordance with such requirements as the Secretary may prescribe, an annual audit to determine the extent to which allowances distributed to the Hub under this subsection, and awards under subsection (e), have been utilized in a manner consistent with this section. The auditor shall transmit a report of the results of the audit to the Secretary and to the Government Accountability Office. The Secretary shall include such report in an annual report to Con-

gress, along with a plan to remedy any deficiencies cited in the report. The Government Accountability Office may review such audits as appropriate and shall have full access to the books, records, and personnel of the Hub to ensure that allowances distributed to the Hub under this subsection, and awards made under subsection (e), have been utilized in a manner consistent with this section.

(6) REVOCATION OF ALLOWANCES.—The Secretary shall have authority to review awards made under this subsection and to revoke such awards if the Secretary determines that a Hub has used the award in a manner not consistent with the requirements of this section.

SEC. 172. ADVANCED ENERGY RESEARCH.

(a) DEFINITIONS.—For purposes of this section:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act (as added by section 311 of this Act).

(2) DIRECTOR.—The term ''Director'' means Director of the Advanced Research Projects Agency-Energy.

(b) IN GENERAL.—Not later than September 30 of 2011 and each calendar year thereafter through 2049, the

Director shall distribute allowances allocated for the following vintage year under section 782(h)(2) of the Clean Air Act (as added by section 321 of this Act). Such allowances shall be distributed on a competitive basis to institutions of higher education, companies, research foundations, trade and industry research collaborations, or consortia of such entities, or other appropriate research and development entities to achieve the goals of the Advanced Research Projects Agency-Energy (as described in section 5012(c) of the America COMPETES Act) through targeted acceleration of—

(1) novel early-stage energy research with possible technology applications;

(2) development of techniques, processes, and technologies, and related testing and evaluation;

(3) development of manufacturing processes for technologies; and

(4) demonstration and coordination with nongovernmental entities for commercial applications of technologies and research applications.

(c) RESPONSIBILITIES.—The Director shall be responsible for assessing the success of programs and terminating programs carried out under this section that are not achieving the goals of the programs, consistent with 5012(e)(2) and (4) of the America COMPETES Act. The

Director shall designate program managers whose responsibilities are consistent with 5012(f)(1)(B) of the America COMPETES Act. The Director's reporting and coordination requirements established through 5012(g) and (h) of the America COMPETES Act shall apply to activities funded through this section.

(d) SUPPLEMENT NOT SUPPLANT.—Assistance provided under this section shall be used to supplement, and not to supplant, any other Federal resources available to carry out activities described in this section.

SEC. 173. BUILDING ASSESSMENT CENTERS.

(a) IN GENERAL.—The Secretary of Energy (in this section referred to as the ''Secretary'') shall provide funding to institutions of higher education for Building Assessment Centers to—

(1) identify opportunities for optimizing energy efficiency and environmental performance in existing buildings;

(2) promote high-efficiency building construction techniques and materials options;

(3) promote applications of emerging concepts and technologies in commercial and institutional buildings;

(4) train engineers, architects, building scientists, and building technicians in energy-efficient design and operation;

(5) assist local community colleges, trade schools, registered apprenticeship programs and other accredited training programs in training building technicians;

(6) promote research and development for the use of alternative energy sources to supply heat and power, for buildings, particularly energy-intensive buildings; and

(7) coordinate with and assist State-accredited technical training centers and community colleges, while ensuring appropriate services to all regions of the United States.

(b) COORDINATION WITH REGIONAL CENTERS FOR ENERGY AND ENVIRONMENTAL KNOWLEDGE AND OUTREACH.—A Building Assessment Center may serve as a Center for Energy and Environmental Knowledge and Outreach established pursuant to section 174.

(c) COORDINATION AND DUPLICATION.—The Secretary shall coordinate efforts under this section with other programs of the Department of Energy and other Federal agencies to avoid duplication of effort.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $50,000,000 for fiscal year 2010 and each fiscal year thereafter.

SEC. 174. CENTERS FOR ENERGY AND ENVIRONMENTAL KNOWLEDGE AND OUTREACH.

(a) REGIONAL CENTERS FOR ENERGY AND ENVIRONMENTAL KNOWLEDGE AND OUTREACH.—

(1) ESTABLISHMENT.—The Secretary shall establish not more than 10 regional Centers for Energy and Environmental Knowledge and Outreach at institutions of higher education to coordinate with and advise industrial research and assessment centers, Building Assessment Centers, and Clean Energy Application Centers located in the region of such Center for Energy and Environmental Knowledge and Outreach.

(2) TECHNICAL ASSISTANCE PROGRAMS.—Each Center for Energy and Environmental Knowledge and Outreach shall consist of at least one, new or existing, high performing, of the following:

(A) An industrial research and assessment center.

(B) A Clean Energy Application Center.

(C) A Building Assessment Center.

(3) SELECTION CRITERIA.—The Secretary shall select Centers for Energy and Environmental Knowledge and Outreach through a competitive process, based on the following:

(A) Identification of the highest performing industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers.

(B) The degree to which an institution of higher education maintains credibility among regional private sector organizations such as trade associations, engineering associations, and environmental organizations.

(C) The degree to which an institution of higher education is providing or has provided technical assistance, academic leadership, and market leadership in the energy arena in a manner that is consistent with the areas of focus of industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers.

(D) The presence of an additional industrial research and assessment center, Clean Energy Application Center, or Building Assess-

ment Center at the institution of higher education.

(4) GEOGRAPHIC DIVERSITY.—In selecting Centers for Energy and Environmental Knowledge and Outreach under this subsection, the Secretary shall ensure such Centers are distributed geographically in a relatively uniform manner to ensure all regions of the Nation are represented.

(5) REGIONAL LEADERSHIP.—Each Center for Energy and Environmental Knowledge and Outreach shall, to the extent possible, provide leadership to all other industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers located in the Center's geographic region, as determined by the Secretary. Such leadership shall include—

(A) developing regional goals specific to the purview of the industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers programs;

(B) developing regionally specific technical resources; and

(C) outreach to interested parties in the region to inform them of the information, re-

sources, and services available through the associated industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers.

(6) FURTHER COORDINATION.—To increase the value and capabilities of the regionally associated industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers programs, Centers for Energy and Environmental Knowledge and Outreach shall—

(A) coordinate with Manufacturing Extension Partnership Centers of the National Institute of Science and Technology;

(B) coordinate with the relevant programs in the Department of Energy, including the Building Technology Program and Industrial Technologies Program;

(C) increase partnerships with the National Laboratories of the Department of Energy to leverage the expertise and technologies of the National Laboratories to achieve the goals of the industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers;

(D) work with relevant municipal, county, and State economic development entities to leverage relevant financial incentives for capital investment and other policy tools for the protection and growth of local business and industry;

(E) partner with local professional and private trade associations and business development interests to leverage existing knowledge of local business challenges and opportunities;

(F) work with energy utilities and other administrators of publicly funded energy programs to leverage existing energy efficiency and clean energy programs;

(G) identify opportunities for reducing greenhouse gas emissions; and

(H) promote sustainable business practices for those served by the industrial research and assessment centers, Clean Energy Application Centers, and Building Assessment Centers.

(7) WORKFORCE TRAINING.—

(A) IN GENERAL.—The Secretary shall require each Center for Energy and Environmental Knowledge and Outreach to establish or maintain an internship program for the region of such Center, designed to encourage students

who perform energy assessments to continue working with a particular company, building, or facility to help implement the recommendations contained in any such assessment provided to such company, building, or facility. Each Center for Energy and Environmental Knowledge and Outreach shall act as internship coordinator to help match students to available opportunities.

(B) FEDERAL SHARE.—The Federal share of the cost of carrying out internship programs described under subparagraph (A) shall be 50 percent.

(C) FUNDING.—Subject to the availability of appropriations, of the funds made available to carry out this subsection, the Secretary shall use to carry out this paragraph not less than $5,000,000 for fiscal year 2010 and each fiscal year thereafter.

(8) SMALL BUSINESS LOANS.—The Administrator of the Small Business Administration shall, to the maximum practicable, expedite consideration of applications from eligible small business concerns for loans under the Small Business Act (15 U.S.C. 631 et seq.) for loans to implement recommendations of any industrial research and assessment center, Clean

1 Energy Application Center, or Building Assessment
2 Center.
3 (9) DEFINITIONS.—In this subsection:
4 (A) INDUSTRIAL RESEARCH AND ASSESS-
5 MENT CENTER.—The term ''industrial research
6 and assessment center'' means a center estab-
7 lished or maintained pursuant to section 452(e)
8 of the Energy Independence and Security Act
9 of 2007 (42 U.S.C. 17111(e)).
10 (B) CLEAN ENERGY APPLICATION CEN-
11 TER.—The term ''Clean Energy Application
12 Center'' means a center redesignated and de-
13 scribed section under section 375 of the Energy
14 Policy and Conservation Act (42 U.S.C. 6345).
15 (C) BUILDING ASSESSMENT CENTER.—The
16 term ''Building Assessment Center'' means an
17 institution of higher education-based center es-
18 tablished pursuant to section 173.
19 (D) SECRETARY.—The term ''Secretary''
20 means the Secretary of Energy.
21 (10) FUNDING.—There are authorized to be ap-
22 propriated to the Secretary to carry out this sub-
23 section $10,000,000 for fiscal year 2010 and each
24 fiscal year thereafter. Subject to the availability of
25 appropriations, of the funds made available to carry

1 out this subsection, the Secretary shall provide to
2 each Center for Energy and Environmental Knowl-
3 edge and Outreach not less than $500,000 for fiscal
4 year 2010 and each fiscal year thereafter.
5 (b) INTEGRATION OF OTHER TECHNICAL ASSIST-
6 ANCE PROGRAMS.—
7 (1) CLEAN ENERGY APPLICATION CENTERS.—
8 Section 375 of the Energy Policy and Conservation
9 Act (42 U.S.C. 6345) is amended—
10 (A) by redesignating subsection (f) as sub-
11 section (g); and
12 (B) by adding after subsection (e) the fol-
13 lowing new subsection:
14 ''(f) COORDINATION WITH CENTERS FOR ENERGY
15 AND ENVIRONMENTAL KNOWLEDGE AND OUTREACH.—A
16 Clean Energy Application Center may serve as a Center
17 for Energy and Environmental Knowledge and Outreach
18 established pursuant to section 174 of the American Clean
19 Energy and Security Act of 2009.''.
20 (2) INDUSTRIAL RESEARCH AND ASSESSMENT
21 CENTERS.—Section 452(e) of the Energy Independ-
22 ence and Security Act of 2007 (42 U.S.C. 17111(e))
23 is amended—

(A) by striking ''The Secretary'' and all that follows through ''shall be—'' and inserting the following:

''(1) IN GENERAL.—The Secretary shall provide funding to institution of higher education-based industrial research and assessment centers, whose purposes shall be—'';

(B) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively (and by moving the margins of such subparagraphs 2 ems to the right); and

(C) by adding at the end the following new paragraph:

''(2) COORDINATION WITH CENTERS FOR ENERGY AND ENVIRONMENTAL KNOWLEDGE AND OUTREACH.—An industrial research and assessment center may serve as a Center for Energy and Environmental Knowledge and Outreach established pursuant to section 174 of the American Clean Energy and Security Act of 2009.''.

(c) ADDITIONAL FUNDING FOR CLEAN ENERGY APPLICATION CENTERS.—Subsection (g) of section 375 of the Energy Policy and Conservation Act (42 U.S.C. 6345(f)), as redesignated by subsection (b)(1) of this section, is amended by striking ''$10,000,000 for each of fis-

cal years 2008 through 2012'' and inserting ''$30,000,000 for fiscal year 2010 and each fiscal year thereafter''.

Subtitle I—Nuclear and Advanced Technologies

SEC. 181. REVISIONS TO LOAN GUARANTEE PROGRAM AUTHORITY.

(a) DEFINITION OF CONDITIONAL COMMITMENT.—Section 1701 of the Energy Policy Act of 2005 (42 U.S.C. 16511), as amended by section 130(a) of this Act, is amended by adding after paragraph (7) the following:

''(8) CONDITIONAL COMMITMENT.—The term 'conditional commitment' means a final term sheet negotiated between the Secretary and a project sponsor or sponsors, which term sheet shall be binding on both parties and become a final loan guarantee agreement if all conditions precedent established in the term sheet, which shall include the acquisition of all necessary permits and licenses, are satisfied.''.

(b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—Section 1702 of the Energy Policy Act of 2005 (42 U.S.C. 16512) is amended by striking subsection (b) and inserting the following:

''(b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—

"(1) IN GENERAL.—No guarantee shall be made unless—

"(A) an appropriation for the cost has been made;

"(B) the Secretary has received from the borrower a payment in full for the cost of the obligation and deposited the payment into the Treasury; or

"(C) a combination of appropriations or payments from the borrower has been made sufficient to cover the cost of the obligation.

"(2) LIMITATION.—The source of payments received from a borrower under paragraph (1)(B) shall not be a loan or other debt obligation that is made or guaranteed by the Federal Government.".

(c) FEES.—Section 1702(h) of the Energy Policy Act of 2005 (42 U.S.C. 16512(h)) is amended by striking paragraph (2) and inserting the following:

"(2) AVAILABILITY.—Fees collected under this subsection shall—

"(A) be deposited by the Secretary into a special fund in the Treasury to be known as the 'Incentives For Innovative Technologies Fund'; and

"(B) remain available to the Secretary for expenditure, without further appropriation or fiscal year limitation, for administrative expenses incurred in carrying out this title.".

(d) WAGE RATE REQUIREMENTS.—Section 1702 of the Energy Policy Act of 2005 (42 U.S.C. 16512) is amended by adding at the end the following new subsection:

"(k) WAGE RATE REQUIREMENTS.—No loan guarantee shall be made under this title unless the borrower has provided to the Secretary reasonable assurances that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by the guaranteed loan will be paid wages at rates not less than those prevailing on projects of a character similar to the contract work in the civil subdivision of the State in which the contract work is to be performed as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code. With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.".

(e) SUBROGATION.—Section 1702(g)(2) of the Energy Policy Act of 2005 (42 U.S.C. 16512(g)(2)) is amended by striking subparagraphs (B) and (C) and inserting the following:

"(B) SUPERIORITY OF RIGHTS.—Except as provided in subparagraph (C), the rights of the Secretary, with respect to any property acquired pursuant to a guarantee or related agreements, shall be superior to the rights of any other person with respect to the property.

"(C) TERMS AND CONDITIONS.—A guarantee agreement shall include such detailed terms and conditions as the Secretary determines appropriate to—

"(i) protect the financial interests of the United States in the case of default;

"(ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project;

"(iii) provide for sharing the proceeds received from the sale of project assets with other creditors or control the disposition of project assets if necessary to pro-

tect the financial interests of the United States in the case of default; and

"(iv) provide such lien priority in project assets as necessary to protect the financial interests of the United States in the case of a default.".

SEC. 182. PURPOSE.

The purpose of sections 183 through 189 of this subtitle is to promote the domestic development and deployment of clean energy technologies required for the 21st century through the establishment of a self-sustaining Clean Energy Deployment Administration that will provide for an attractive investment environment through partnership with and support of the private capital market in order to promote access to affordable financing for accelerated and widespread deployment of—

(1) clean energy technologies;

(2) advanced or enabling energy infrastructure technologies;

(3) energy efficiency technologies in residential, commercial, and industrial applications, including end-use efficiency in buildings; and

(4) manufacturing technologies for any of the technologies or applications described in this section.

SEC. 183. DEFINITIONS.

In this subtitle:

(1) ADMINISTRATION.—The term ''Administration'' means the Clean Energy Deployment Administration established by section 186.

(2) ADVISORY COUNCIL.—The term ''Advisory Council'' means the Energy Technology Advisory Council of the Administration.

(3) BREAKTHROUGH TECHNOLOGY.—The term ''breakthrough technology'' means a clean energy technology that—

(A) presents a significant opportunity to advance the goals developed under section 185, as assessed under the methodology established by the Advisory Council; but

(B) has generally not been considered a commercially ready technology as a result of high perceived technology risk or other similar factors.

(4) CLEAN ENERGY TECHNOLOGY.—The term ''clean energy technology'' means a technology related to the production, use, transmission, storage, control, or conservation of energy—

(A) that will contribute to a stabilization of atmospheric greenhouse gas concentrations

thorough reduction, avoidance, or sequestration of energy-related emissions and—

(i) reduce the need for additional energy supplies by using existing energy supplies with greater efficiency or by transmitting, distributing, or transporting energy with greater effectiveness through the infrastructure of the United States; or

(ii) diversify the sources of energy supply of the United States to strengthen energy security and to increase supplies with a favorable balance of environmental effects if the entire technology system is considered; and

(B) for which, as determined by the Administrator, insufficient commercial lending is available at affordable rates to allow for widespread deployment.

(5) COST.—The term ''cost'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(6) DIRECT LOAN.—The term ''direct loan'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(7) FUND.—The term ''Fund'' means the Clean Energy Investment Fund established by section 184(a).

(8) GREEN BONDS.—The term ''Green Bonds'' means bonds issued pursuant to section 184.

(8) LOAN GUARANTEE.—The term ''loan guarantee'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(9) NATIONAL LABORATORY.—The term ''National Laboratory'' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

(10) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(11) STATE.—The term ''State'' means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico; and

(D) any other territory or possession of the United States.

(12) TECHNOLOGY RISK.—The term ''technology risk'' means the risks during construction or operation associated with the design, development,

and deployment of clean energy technologies (including the cost, schedule, performance, reliability and maintenance, and accounting for the perceived risk), from the perspective of commercial lenders, that may be increased as a result of the absence of adequate historical construction, operating, or performance data from commercial applications of the technology.

SEC. 184. CLEAN ENERGY INVESTMENT FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the ''Clean Energy Investment Fund'', consisting of—

(1) such amounts as are deposited in the Fund under this subtitle; and

(2) such sums as may be appropriated to supplement the Fund.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out this subtitle.

(c) EXPENDITURES FROM FUND.—

(1) IN GENERAL.—Amounts in the Fund shall be available to the Administrator of the Administration for obligation without fiscal year limitation, to remain available until expended.

(2) ADMINISTRATIVE EXPENSES.—

(A) FEES.—Fees collected for administrative expenses shall be available without limitation to cover applicable expenses.

(B) FUND.—To the extent that administrative expenses are not reimbursed through fees, an amount not to exceed 1.5 percent of the amounts in the Fund as of the beginning of each fiscal year shall be available to pay the administrative expenses for the fiscal year necessary to carry out this subtitle.

(d) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(3) CASH FLOWS.—Cash flows associated with costs of the Fund described in section 502(5)(B) of the Federal Credit Reform Act of 1990 (2 U.S.C.

661a(5)(B)) shall be transferred to appropriate credit accounts.

(e) GREEN BONDS.—

(1) INITIAL CAPITALIZATION.—The Secretary of the Treasury shall issue Green Bonds in the amount of $7,500,000,000 on the credit of the United States to acquire capital stock of the Administration. Stock certificates evidencing ownership in the Administration shall be issued by the Administration to the Secretary of the Treasury, to the extent of payments made for the capital stock of the Administration.

(2) DENOMINATIONS AND MATURITY.—Green Bonds shall be in such forms and denominations, and shall mature within such periods, as determined by the Secretary of the Treasury.

(3) INTEREST.—Green Bonds shall bear interest at a rate not less than the current average yield on outstanding market obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury.

(4) LAWFUL INVESTMENTS.—Green Bonds shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the

investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof.

SEC. 185. ENERGY TECHNOLOGY DEPLOYMENT GOALS.

(a) GOALS.—Not later than 1 year after the date of enactment of this Act, the Secretary, after consultation with the Advisory Council, shall develop and publish for review and comment in the Federal Register recommended near-, medium-, and long-term goals (including numerical performance targets at appropriate intervals to measure progress toward those goals) for the deployment of clean energy technologies through the credit support programs established by section 187 to promote—

(1) sufficient electric generating capacity using clean energy technologies to meet the energy needs of the United States;

(2) clean energy technologies in vehicles and fuels that will substantially reduce the reliance of the United States on foreign sources of energy and insulate consumers from the volatility of world energy markets;

(3) a domestic commercialization and manufacturing capacity that will establish the United States as a world leader in clean energy technologies across multiple sectors;

(4) installation of sufficient infrastructure to allow for the cost-effective deployment of clean energy technologies appropriate to each region of the United States;

(5) the transformation of the building stock of the United States to zero net energy consumption;

(6) the recovery, use, and prevention of waste energy;

(7) domestic manufacturing of clean energy technologies on a scale that is sufficient to achieve price parity with conventional energy sources;

(8) domestic production of commodities and materials (such as steel, chemicals, polymers, and cement) using clean energy technologies so that the United States will become a world leader in environmentally sustainable production of the commodities and materials;

(9) a robust, efficient, and interactive electricity transmission grid that will allow for the incorporation of clean energy technologies, distributed generation, and demand-response in each regional electric grid;

(10) sufficient availability of financial products to allow owners and users of residential, retail, commercial, and industrial buildings to make energy ef-

ficiency and distributed generation technology investments with reasonable payback periods; and

(11) such other goals as the Secretary, in consultation with the Advisory Council, determines to be consistent with the purpose stated in section 182.

(b) REVISIONS.—The Secretary shall revise the goals established under subsection (a), from time to time as appropriate, to account for advances in technology and changes in energy policy.

SEC. 186. CLEAN ENERGY DEPLOYMENT ADMINISTRATION.

(a) ESTABLISHMENT.—

(1) ESTABLISHMENT OF CORPORATION.—There is established a corporation to be known as the Clean Energy Deployment Administration that shall be wholly owned by the United States.

(2) INDEPENDENT CORPORATION.—The Administration shall be an independent corporation. Neither the Administration nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress provides otherwise.

(3) CHARTER.—The Administration shall be chartered for 20 years from the date of enactment of this section.

(4) STATUS.—

(A) INSPECTOR GENERAL.—Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(i) in paragraph (1), by inserting ''the Administrator of the Clean Energy Deployment Administration;'' after ''Export-Import Bank;''; and

(ii) in paragraph (2), by inserting ''the Clean Energy Deployment Administration,'' after ''Export-Import Bank,''.

(3) OFFICES.—

(A) PRINCIPAL OFFICE.—The Administration shall—

(i) maintain the principal office of the Administration in the national capital region; and

(ii) for purposes of venue in civil actions, be considered to be a resident of the District of Columbia.

(B) OTHER OFFICES.—The Administration may establish other offices in such other places as the Administration considers necessary or appropriate for the conduct of the business of the Administration.

(b) ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Administration shall be—

(A) appointed by the President, with the advice and consent of the Senate, for a 5-year term; and

(B) compensated at the prevailing rate for compensation for similar positions in industry.

(2) DUTIES.—The Administrator of the Administration shall—

(A) serve as the Chief Executive Officer of the Administration and Chairman of the Board;

(B) ensure that—

(i) the Administration operates in a safe and sound manner, including maintenance of adequate capital and internal controls (consistent with section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262));

(ii) the operations and activities of the Administration foster liquid, efficient, competitive, and resilient energy and energy efficiency finance markets;

(iii) the Administration carries out the purpose stated in section 182 only through

activities that are authorized under and consistent with sections 182 through 189; and

(iv) the activities of the Administration and the manner in which the Administration is operated are consistent with the public interest;

(C) develop policies and procedures for the Administration that will—

(i) promote a self-sustaining portfolio of investments that will maximize the value of investments to effectively promote clean energy technologies;

(ii) promote transparency and openness in Administration operations;

(iii) afford the Administration with sufficient flexibility to meet the purpose stated in section 182; and

(iv) provide for the efficient processing of applications; and

(D) with the concurrence of the Board, set expected loss reserves for the support provided by the Administration consistent with section 187(c).

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The Board of Directors of the Administration shall consist of—

(A) the Secretary or the designee of the Secretary, who shall serve as an ex-officio member of the Board of Directors;

(B) the Secretary of the Treasury or the designee of the Secretary, who shall serve as an ex-officio member of the Board of Directors;

(C) the Secretary of the Interior or the designee of the Secretary, who shall serve as an ex-officio member of the Board of Directors;

(D) the Secretary of Agriculture or the designee of the Secretary, who shall serve as an ex officio member of the Board of Directors;

(E) the Administrator of the Administration, who shall serve as the Chairman of the Board of Directors; and

(F) 4 additional members who shall—

(i) be appointed by the President, with the advice and consent of the Senate, for staggered 5-year terms; and

(ii) have experience in banking, financial services, technology assessment, energy regulation, or risk management, including individuals with substantial experience in

the development of energy projects, the electricity generation sector, the transportation sector, the manufacturing sector, and the energy efficiency sector.

(2) DUTIES.—The Board of Directors shall—

(A) oversee the operations of the Administration and ensure industry best practices are followed in all financial transactions involving the Administration;

(B) consult with the Administrator of the Administration on the general policies and procedures of the Administration to ensure the interests of the taxpayers are protected;

(C) ensure the portfolio of investments are consistent with purpose stated in section 182 and with the long-term financial stability of the Administration;

(D) ensure that the operations and activities of the Administration are consistent with the development of a robust private sector that can provide commercial loans or financing products; and

(E) not serve on a full-time basis, except that the Board of Directors shall meet at least quarterly to review, as appropriate, applications

for credit support and set policies and procedures as necessary.

(3) REMOVAL.—An appointed member of the Board of Directors may be removed from office by the President for good cause.

(4) VACANCIES.—An appointed seat on the Board of Directors that becomes vacant shall be filled by appointment by the President, but only for the unexpired portion of the term of the vacating member.

(5) COMPENSATION OF MEMBERS.—An appointed member of the Board of Directors shall be compensated at the prevailing rate for compensation for similar positions in industry.

(d) ENERGY TECHNOLOGY ADVISORY COUNCIL.—

(1) IN GENERAL.—The Administration shall have an Energy Technology Advisory Council consisting of 8 members selected by the Board of Directors of the Administration.

(2) QUALIFICATIONS.—The members of the Advisory Council shall—

(A) have clean energy project development, clean energy finance, commercial, and/or relevant scientific expertise; and

(B) include representatives of—

(i) the academic community;

(ii) the private research community;

(iii) National Laboratories;

(iv) the technology or project development community; and

(v) the commercial energy financing and operations sector.

(3) DUTIES.—The Advisory Council shall—

(A) develop and publish for comment in the Federal Register a methodology for assessment of clean energy technologies that will allow the Administration to evaluate projects based on the progress likely to be achieved per-dollar invested in maximizing the attributes of the definition of clean energy technology, taking into account the extent to which support for a clean energy technology is likely to accrue subsequent benefits that are attributable to a commercial scale deployment taking place earlier than that which otherwise would have occurred without the support; and

(B) advise on the technological approaches that should be supported by the Administration to meet the technology deployment goals established by the Secretary pursuant to section 185.

(4) TERM.—

(A) IN GENERAL.—Members of the Advisory Council shall have 5-year staggered terms, as determined by the Administrator of the Administration.

(B) REAPPOINTMENT.—A member of the Advisory Council may be reappointed.

(5) COMPENSATION.—A member of the Advisory Council, who is not otherwise compensated as a Federal employee, shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Advisory Council.

(e) STAFF.—

(1) IN GENERAL.—The Administrator of the Administration, in consultation with the Board of Directors, may—

(A) appoint and terminate such officers, attorneys, employees, and agents as are necessary to carry out this subtitle; and

(B) vest those personnel with such powers and duties as the Administrator of the Administration may determine.

(f) CONFLICTS OF INTEREST.—No director, officer, attorney, agent, or employee of the Administration shall in any manner, directly or indirectly, participate in the deliberation upon, or the determination of, any question affecting such individual's personal interests, or the interests of any corporation, partnership, or association in which such individual is directly or indirectly personally interested.

(g) SUNSET.—

(1) EXPIRATION OF CHARTER.—The Administration shall continue to exercise its functions until all obligations and commitments of the Administration are discharged, even after its charter has expired.

(2) PRIOR OBLIGATIONS.—No provisions of this subsection shall be construed as preventing the Administration from—

(A) undertaking obligations prior to the date of the expiration of its charter which mature subsequent to such date;

(B) assuming, prior to the date of the expiration of its charter, liability as guarantor,

endorser, or acceptor of obligations which mature subsequent to such date; or

(C) continuing as a corporation and exercising any of its functions subsequent to the date of the expiration of its charter for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the Administration.

SEC. 187. DIRECT SUPPORT.

(a) IN GENERAL.—The Administration may issue direct loans, letters of credit, and loan guarantees to deploy clean energy technologies if the Administrator of the Administration has determined that deployment of the technologies would benefit or be accelerated by the support.

(b) ELIGIBILITY CRITERIA.—In carrying out this section and awarding credit support to projects, the Administrator of the Administration shall account for—

(1) how the technology rates based on an evaluation methodology established by the Advisory Council;

(2) how the project fits with the goals established under section 185; and

(3) the potential for the applicant to successfully complete the project.

(c) RISK.—

(1) EXPECTED LOAN LOSS RESERVE.—The Administrator of the Administration shall establish an expected loan loss reserve to account for estimated losses attributable to activities under this section that is consistent with the purposes of—

(A) developing breakthrough technologies to the point at which technology risk is largely mitigated;

(B) achieving widespread deployment and advancing the commercial viability of clean energy technologies; and

(C) advancing the goals established under section 185.

(2) INITIAL EXPECTED LOAN LOSS RESERVE.—Until such time as the Administrator of the Administration determines sufficient data exist to establish an expected loan loss reserve that is appropriate, the Administrator of the Administration shall consider establishing an initial rate of 10 percent for the portfolio of investments under this subtitle.

(3) PORTFOLIO INVESTMENT APPROACH.—The Administration shall—

(A) use a portfolio investment approach to mitigate risk and diversify investments across technologies and ensure that no particular tech-

nology is provided more than 30 percent of the financial support available;

(B) to the maximum extent practicable and consistent with long-term self-sufficiency, weigh the portfolio of investments in projects to advance the goals established under section 185;

(C) consistent with the expected loan loss reserve established under this subsection, the purpose stated in section 182, and section 186(b)(2)(B), provide the maximum practicable percentage of support to promote breakthrough technologies; and

(D) give the highest priority to investments that promote technologies that will achieve the maximum greenhouse gas emission reductions within a reasonable period of time per dollar invested and the earliest reductions in greenhouse gas emissions.

(4) LOSS RATE REVIEW.—

(A) IN GENERAL.—The Board of Directors shall review on an annual basis the loss rates of the portfolio to determine the adequacy of the reserves.

(B) REPORT.—Not later than 90 days after the date of the initiation of the review, the

Administrator of the Administration shall submit to the Committee on Energy and Natural Resources and the Committee on Finance of the Senate, and the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives a report describing the results of the review and any recommended policy changes.

(5) FEDERAL COST SHARE.—Direct loans, letters of credit and loan guarantees by the Administration shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the loan, letter of credit or loan guarantee, as estimated at the time at which the loan, letter of credit or loan guarantee is issued.

(d) APPLICATION REVIEW.—

(1) IN GENERAL.—To the maximum extent practicable and consistent with sound business practices, the Administration shall seek to consolidate reviews of applications for credit support under this subtitle such that final decisions on applications can generally be issued not later than 180 days after the date of submission of a completed application.

(2) ENVIRONMENTAL REVIEW.—In carrying out this subtitle, the Administration shall, to the maximum extent practicable—

(A) avoid duplicating efforts that have already been undertaken by other agencies (including State agencies acting under Federal programs); and

(B) with the advice of the Council on Environmental Quality and any other applicable agencies, use the administrative records of similar reviews conducted throughout the executive branch to develop the most expeditious review process practicable.

(e) WAGE RATE REQUIREMENTS.—

(1) IN GENERAL.—No credit support shall be issued under this section unless the borrower has provided to the Administrator of the Administration reasonable assurances that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by the Administration will be paid wages at rates not less than those prevailing on projects of a character similar to the contract work in the civil subdivision of the State in which the contract work is to be performed as determined by the

1 Secretary of Labor in accordance with subchapter
2 IV of chapter 31 of part A of subtitle II of title 40,
3 United States Code.
4 (2) LABOR STANDARDS.—With respect to the
5 labor standards specified in this subsection, the Sec-
6 retary of Labor shall have the authority and func-
7 tions set forth in Reorganization Plan Numbered 14
8 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section
9 3145 of title 40, United States Code.
10 (f) LIMITATIONS.—(1) The Administration shall not
11 provide direct support as defined under this section or in-
12 direct support as defined under section 188 to an indi-
13 vidual clean energy technology project that obtained a loan
14 guarantee under title XVII of the Energy Policy Act of
15 2005.
16 (2) No direct or indirect support provided by the Ad-
17 ministration may be used to pay any part of the cost of
18 an obligation or a loan guarantee under Title XVII of the
19 Energy Policy Act of 2005.
20 **SEC. 188. INDIRECT SUPPORT.**
21 (a) IN GENERAL.—For the purpose of enhancing the
22 availability of private financing for clean energy tech-
23 nology deployment, the Administration may—
24 (1) provide credit support to portfolios of tax-
25 able debt obligations originated by state, local, and

private sector entities that enable owners and users of buildings and industrial facilities to—

(A) significantly increase the energy efficiency of such buildings or facilities; or

(B) install systems that individually generate electricity from renewable energy resources and have a capacity of no more than 2 megawatts;

(2) facilitate financing transactions in tax equity markets and long-term purchasing of clean energy by state, local, and non-governmental not-for-profit entities, to the degree and extent that the Administration determines such financing activity is appropriate and consistent with carrying out the purposes described in Section 182 of this Act; and

(3) provide credit support to portfolios of taxable debt obligations originated by state, local, and private sector entities that enable the deployment of energy storage applications for electric drive vehicles, stationary applications, and electricity transmission and distribution.

(b) DEFINITIONS.—For purposes of the section:

(1) CREDIT SUPPORT.—The term ''credit support'' means—

(A) direct loans, letters of credit, loan guarantees, and insurance products; and

(B) the purchase or commitment to purchase, or the sale or commitment to sell, debt instruments (including subordinated securities).

(2) RENEWABLE ENERGY RESOURCE.—The term ''renewable energy resource'' shall have the meaning given that term in section 610 of the Public Utility Regulatory Policies Act of 1978 (as added by section 101 of this Act).

(c) TRANSPARENCY.—The Administration shall seek to foster through its credit support activities—

(1) the development and consistent application of standard contractual terms, transparent underwriting standards and consistent measurement and verification protocols, as applicable; and

(2) the creation of performance data that promotes effective underwriting and risk management to support lending markets and stimulate the development of private investment markets.

(d) EXEMPT SECURITIES.—All securities insured or guaranteed by the Administration shall, to the same extent as securities that are direct obligations of or obligations guaranteed as to the principal or interest by the United States, be considered to be exempt securities with-

in the meaning of the laws administered by the Securities and Exchange Commission.

SEC. 189. FEDERAL CREDIT AUTHORITY.

(a) PAYMENTS OF LIABILITIES.—

(1) IN GENERAL.—Any payment made to discharge liabilities arising from agreements under this subtitle shall be paid exclusively out of the Fund or the associated credit account, as appropriate.

(2) SECURITY.—Subject to paragraph (1), the full faith and credit of the United States is pledged to the payment of all obligations entered into by the Administration pursuant to this subtitle.

(b) FEES.—

(1) IN GENERAL.—Consistent with achieving the purpose stated in section 182, the Administrator of the Administration shall charge fees or collect compensation generally in accordance with commercial rates.

(2) AVAILABILITY OF FEES.—All fees collected by the Administration may be retained by the Administration and placed in the Fund and may remain available to the Administration, without further appropriation or fiscal year limitation, for use in carrying out the purpose stated in section 182.

(3) BREAKTHROUGH TECHNOLOGIES.—The Administration shall charge the minimum amount in fees or compensation practicable for breakthrough technologies, consistent with the long-term viability of the Administration, unless the Administration first determines that a higher charge will not impede the development of the technology.

(4) ALTERNATIVE FEE ARRANGEMENTS.—The Administration may use such alternative arrangements (such as profit participation, contingent fees, and other valuable contingent interests) as the Administration considers appropriate to compensate the Administration for the expenses of the Administration and the risk inherent in the support of the Administration.

(c) COST TRANSFER AUTHORITY.—Amounts collected by the Administration for the cost of a loan or loan guarantee shall be transferred by the Administration to the respective credit accounts.

SEC. 190. GENERAL PROVISIONS.

(a) IMMUNITY FROM IMPAIRMENT, LIMITATION, OR RESTRICTION.—

(1) IN GENERAL.—All rights and remedies of the Administration (including any rights and remedies of the Administration on, under, or with re-

spect to any mortgage or any obligation secured by a mortgage) shall be immune from impairment, limitation, or restriction by or under—

(A) any law (other than a law enacted by Congress expressly in limitation of this paragraph) that becomes effective after the acquisition by the Administration of the subject or property on, under, or with respect to which the right or remedy arises or exists or would so arise or exist in the absence of the law; or

(B) any administrative or other action that becomes effective after the acquisition.

(2) STATE LAW.—The Administrator of the Administration may conduct the business of the Administration without regard to any qualification or law of any State relating to incorporation.

(b) USE OF OTHER AGENCIES.—With the consent of a department, establishment, or instrumentality (including any field office), the Administration may—

(1) use and act through any department, establishment, or instrumentality; and

(2) use, and pay compensation for, information, services, facilities, and personnel of the department, establishment, or instrumentality.

(c) FINANCIAL MATTERS.—

(1) INVESTMENTS.—Funds of the Administration may be invested in such investments as the Board of Directors may prescribe. Earnings from such funds, other than fees collected under section 189, may be spent by the Administration only to such extent or in such amounts as are provided in advance by appropriation Acts.

(2) FISCAL AGENTS.—Any Federal Reserve bank or any bank as to which at the time of the designation of the bank by the Administrator of the Administration there is outstanding a designation by the Secretary of the Treasury as a general or other depository of public money, may be designated by the Administrator of the Administration as a depositary or custodian or as a fiscal or other agent of the Administration.

(d) PERIODIC REPORTS.—Not later than 1 year after commencement of operation of the Administration and at least biannually thereafter, the Administrator of the Administration shall submit to the Committee on Energy and Natural Resources and the Committee on Finance of the Senate and the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives a report that includes a description of—

(1) the technologies supported by activities of the Administration and how the activities advance the purpose stated in section 182; and

(2) the performance of the Administration on meeting the goals established under section 185.

(g) AUDITS BY THE COMPTROLLER GENERAL.—

(1) IN GENERAL.—The programs, activities, receipts, expenditures, and financial transactions of the Administration shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.

(2) ACCESS.—The representatives of the Government Accountability Office shall—

(A) have access to the personnel and to all books, accounts, documents, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to, under the control of, or in use by the Administration, or any agent, representative, attorney, advisor, or consultant retained by the Administration, and necessary to facilitate the audit;

(B) be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians;

(C) be authorized to obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to the audit without cost to the Comptroller General; and

(D) have the right of access of the Comptroller General to such information pursuant to section 716(c) of title 31, United States Code.

(3) ASSISTANCE AND COST.—

(A) IN GENERAL.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes.

(B) REIMBURSEMENT.—

(i) IN GENERAL.—On the request of the Comptroller General, the Administration shall reimburse the Government Ac-

countability Office for the full cost of any audit conducted by the Comptroller General under this subsection.

(ii) CREDITING.—Such reimbursements shall—

(I) be credited to the appropriation account entitled ''Salaries and Expenses, Government Accountability Office'' at the time at which the payment is received; and

(II) remain available until expended.

(h) ANNUAL INDEPENDENT AUDITS.—

(1) IN GENERAL.—The Administrator of the Administration shall—

(A) have an annual independent audit made of the financial statements of the Administration by an independent public accountant in accordance with generally accepted auditing standards; and

(B) submit to the Secretary and to the Committee on Energy and Natural Resources and the Committee on Finance of the Senate and the Committee on Energy and Commerce

and the Committee on Ways and Means of the House the results of the audit.

(2) CONTENT.—In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the Administration—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) comply with any disclosure requirements imposed under this subtitle.

(i) FINANCIAL REPORTS.—

(1) IN GENERAL.—The Administrator of the Administration shall submit to the Secretary and to the Committee on Energy and Natural Resources and the Committee on Finance of the Senate and the Committee on Energy and Commerce and the Committee on Ways and Means of the House annual and quarterly reports of the financial condition and operations of the Administration, which shall be in such form, contain such information, and be submitted on such dates as the Secretary shall require.

(2) CONTENTS OF ANNUAL REPORTS.—Each annual report shall include—

(A) financial statements prepared in accordance with generally accepted accounting principles;

(B) any supplemental information or alternative presentation that the Secretary may require; and

(C) an assessment (as of the end of the most recent fiscal year of the Administration), signed by the chief executive officer and chief accounting or financial officer of the Administration, of—

(i) the effectiveness of the internal control structure and procedures of the Administration; and

(ii) the compliance of the Administration with applicable safety and soundness laws.

(3) SPECIAL REPORTS.—The Secretary may require the Administrator of the Administration to submit other reports on the condition (including financial condition), management, activities, or operations of the Administration, as the Secretary considers appropriate.

(4) ACCURACY.—Each report of financial condition shall contain a declaration by the Administrator

of the Administration or any other officer designated by the Board of Directors of the Administration to make the declaration, that the report is true and correct to the best of the knowledge and belief of the officer.

(5) AVAILABILITY OF REPORTS.—Reports required under this section shall be published and made publicly available as soon as is practicable after receipt by the Secretary.

(j) SPENDING SAFEGUARDS AND REPORTING.—

(1) IN GENERAL.—The Administrator—

(A) shall require any entity receiving financing support from the Administration to report quarterly, in a format specified by the Administrator, on such entity's use of such support and its progress fulfilling the objectives for which such support was granted, and the Administrator shall make these reports available to the public;

(B) may establish additional reporting and information requirements for any recipient of financing support from the Administration;

(C) shall establish appropriate mechanisms to ensure appropriate use and compliance with

all terms of any financing support from the Administration;

(D) shall create and maintain a fully searchable database, accessible on the Internet (or successor protocol) at no cost to the public, that contains at least—

(i) a list of each entity that has applied for financing support;

(ii) a description of each application;

(iii) the status of each such application;

(iv) the name of each entity receiving financing support;

(v) the purpose for which such entity is receiving such financing support;

(vi) each quarterly report submitted by the entity pursuant to this section; and

(vii) such other information sufficient to allow the public to understand and monitor the financial support provided by the Administration;

(E) shall make all financing transactions available for public inspection, including formal annual reviews by both a private auditor and the Comptroller General; and

(F) shall at all times be available to receive public comment in writing on the activities of the Administration.

(2) PROTECTION OF CONFIDENTIAL BUSINESS INFORMATION.—To the extent necessary and appropriate, the Administrator may redact any information regarding applicants and borrowers to protect confidential business information.

SEC. 191. CONFORMING AMENDMENTS.

(a) TAX EXEMPT STATUS.—Subsection (l) of section 501 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(4) The Clean Energy Deployment Administration established under section 9801 of title 31, United States Code.''.

(b) WHOLLY OWNED GOVERNMENT CORPORATION.—Paragraph (3) of section 9101 of title 31, United States Code, is amended by adding at the end the following:

''(S) the Clean Energy Deployment Administration.''.

Subtitle J—Miscellaneous

SEC. 195. INCREASED HYDROELECTRIC GENERATION AT EXISTING FEDERAL FACILITIES.

(a) IN GENERAL.—The Secretary of the Interior, the Secretary of Energy, and the Secretary of the Army shall jointly update the study of the potential for increasing electric power production capability at federally owned or operated water regulation, storage, and conveyance facilities required in section 1834 of the Energy Policy Act of 2005.

(b) CONTENT.—The update under this section shall include identification and description in detail of each facility that is capable, with or without modification, of producing additional hydroelectric power, including estimation of the existing potential for the facility to generate hydroelectric power.

(c) REPORT.—The Secretaries shall submit to the Committees on Energy and Commerce, Natural Resources, and Transportation and Infrastructure of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings, conclusions, and recommendations of the update of the study under this section by not later than 12 months after the date of enactment of this Act. The report shall include each of the following:

(1) The identifications, descriptions, and estimations referred to in subsection (b).

(2) A description of activities currently conducted or considered, or that could be considered, to produce additional hydroelectric power from each identified facility.

(3) A summary of prior actions taken by the Secretaries to produce additional hydroelectric power from each identified facility.

(4) The costs to install, upgrade, or modify equipment or take other actions to produce additional hydroelectric power from each identified facility, and the level of Federal power customer involvement in the determination of such costs.

(5) The benefits that would be achieved by such installation, upgrade, modification, or other action, including quantified estimates of any additional energy or capacity from each facility identified under subsection (b).

(6) A description of actions that are planned, underway, or might reasonably be considered to increase hydroelectric power production by replacing turbine runners, by performing generator upgrades or rewinds, or by construction of pumped storage facilities.

(7) The impact of increased hydroelectric power production on irrigation, water supply, fish, wildlife, Indian tribes, river health, water quality, navigation, recreation, fishing, and flood control.

(8) Any additional recommendations to increase hydroelectric power production from, and reduce costs and improve efficiency at, federally owned or operated water regulation, storage, and conveyance facilities.

SEC. 196. CLEAN TECHNOLOGY BUSINESS COMPETITION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary of Energy is authorized to provide grants to organizations to conduct business competitions that provide incentives, training, and mentorship to entrepreneurs and early stage start-up companies throughout the United States to meet high priority economic, environmental, and energy security goals in areas to include energy efficiency, renewable energy, air quality, water quality and conservation, transportation, smart grid, green building, and waste management. Such competitions shall have the purpose of accelerating the development and deployment of clean technology businesses and green jobs; stimulating green economic development; providing business training and mentoring to early stage clean technology companies; and strengthening the com-

1 petitiveness of United States clean technology industry in
2 world trade markets. Priority shall be given to business
3 competitions that are private sector led, encourage re-
4 gional and interregional cooperation, and can demonstrate
5 market-driven practices and show the creation of cost-ef-
6 fective green jobs through an annual publication of com-
7 petition activities and directory of companies.

8 (b) ELIGIBILITY.—An organization eligible for a
9 grant under subsection (a) is—

10 (1) any organization described in section
11 501(c)(3) of the Internal Revenue Code of 1986 and
12 exempt from tax under section 501(a) of such Code;
13 and

14 (2) any sponsored entity of an organization de-
15 scribed in paragraph (1) that is operated as a non-
16 profit entity.

17 (c) PRIORITY.—In making grants under this section,
18 the Secretary shall give priority to those organizations
19 that can demonstrate broad funding support from private
20 and other non-Federal funding sources to leverage Federal
21 investment.

22 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
23 purpose of carrying out this section, there are authorized
24 to be appropriated $20,000,000.

SEC. 197. NATIONAL BIOENERGY PARTNERSHIP.

(a) IN GENERAL.—The Secretary of Energy shall establish a National Bioenergy Partnership to provide coordination among programs of State governments, the Federal Government, and the private sector that support the institutional and physical infrastructure necessary to promote the deployment of sustainable biomass fuels and bioenergy technologies for the United States.

(b) PROGRAM.—The National Bioenergy Partnership shall consist of five regions, to be administered by the CONEG Policy Research Center, the Council of Great Lakes Governors, the Southern States Energy Board, the Western Governors Association, and the Pacific Regional Biomass Energy Partnership led by the Washington State University Energy Program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2010 through 2014 to carry out this section—

(1) $5,000,000, to be allocated among the 5 regions described in subsection (b) on the basis of the number of States in each region, for distribution among the member States of that region based on procedures developed by the member States of the region; and

(2) $2,500,000, to be allocated equally among the 5 regions described in subsection (b) for region-

wide activities, including technical assistance and regional studies and coordination.

SEC. 198. OFFICE OF CONSUMER ADVOCACY.

Section 319 of the Federal Power Act is amended to read as follows:

"SEC. 319. OFFICE OF CONSUMER ADVOCACY.

"(a) OFFICE.—

"(1) ESTABLISHMENT.—There is established within the Commission an Office of Consumer Advocacy to serve as an advocate for the public interest. The Office of Administrative Litigation within the Commission shall be incorporated into the Office of Consumer Advocacy.

"(2) DIRECTOR.—The Office shall be headed by a Director to be appointed by the President by and with the advice and consent of the Senate from among individuals who are licensed attorneys admitted to the Bar of any State or of the District of Columbia and who have experience in public utility proceedings.

"(3) DUTIES.—The Office may—

"(A) represent the interests of energy customers—

"(i) on matters before the Commission concerning rates or service of public utili-

ties and natural gas companies under the jurisdiction of the Commission;

"(ii) as amicus curiae, in the review in the courts of the United States of rulings by the Commission in such matters; and

"(iii) as amicus, in hearings and proceedings in other Federal regulatory agencies and commissions related to such matters;

"(B) monitor and review energy customer complaints and grievances on matters concerning rates or service of public utilities and natural gas companies under the jurisdiction of the Commission;

"(C) investigate independently, or within the context of formal proceedings, the services provided by, the rates charged by, and the valuation of the properties of, public utilities and natural gas companies under the jurisdiction of the Commission;

"(D) develop means, such as public dissemination of information, consultative services, and technical assistance, to ensure, to the maximum extent practicable, that the interests of energy consumers are adequately represented in

the course of any hearing or proceeding described in subparagraph (A);

"(E) collect data concerning rates or service of public utilities and natural gas companies under the jurisdiction of the Commission; and

"(F) prepare and issue reports and recommendations.

"(4) COMPENSATION AND POWERS.—The Director shall be compensated at Level IV of the Executive Schedule. The Director may—

"(A) employ not more than 25 full-time professional employees at appropriate levels in the GS Scale and such additional support personnel as required; and

"(B) procure temporary and intermittent services as needed.

"(5) INFORMATION FROM OTHER FEDERAL AGENCIES.—The Director may request, from any department, agency, or instrumentality of the United States such information as he deems necessary to carry out his functions under this section. Upon such request, the head of the department, agency, or instrumentality concerned shall, to the extent practicable and authorized by law, provide such information to the Office.

1 "(b) CONSUMER ADVOCACY ADVISORY COM-
2 MITTEE.—
3 "(1) ESTABLISHMENT.—The Director shall es-
4 tablish an advisory committee to be known as Con-
5 sumer Advocacy Advisory Committee (in this section
6 referred to as the 'Advisory Committee') to review
7 rates, services, and disputes and to make rec-
8 ommendations to the Director.
9 "(2) COMPOSITION.—The Director shall ap-
10 point 5 members to the Advisory Committee includ-
11 ing—
12 "(A) 2 individuals representing State util-
13 ity consumer advocates; and
14 "(B) 1 individual, from a nongovernmental
15 organization representing consumers.
16 "(3) MEETINGS.—The Advisory Committee
17 shall meet at such frequency as may be required to
18 carry out its duties.
19 "(4) REPORTS.—The Director shall provide for
20 the publication of recommendations of the Advisory
21 Committee on the public website established for the
22 Office.
23 "(5) DURATION.—Notwithstanding any other
24 provision of law, the Advisory Committee shall con-

1 tinue in operation during the period for which the
2 Office exists.
3 "(c) DEFINITIONS.—
4 "(1) ENERGY CUSTOMER.—The term 'energy
5 customer' means a residential customer or a small
6 commercial customer that receives products or serv-
7 ices directly or indirectly from a public utility or
8 natural gas company under the jurisdiction of the
9 Commission.
10 "(2) NATURAL GAS COMPANY.—The term 'nat-
11 ural gas company' has the meaning given the term
12 in section 2 of the Natural Gas Act (15 U.S.C.
13 717a), as modified by section 601(a) of the Natural
14 Gas Policy Act of 1978 (15 U.S.C. 3431(a)).
15 "(3) OFFICE.—The term 'Office' means the Of-
16 fice of Consumer Advocacy established under this
17 section.
18 "(4) PUBLIC UTILITY.—The term 'public util-
19 ity' has the meaning given the term in section
20 201(e) of this Act.
21 "(5) SMALL COMMERCIAL CUSTOMER.—The
22 term 'small commercial customer' means a commer-
23 cial customer that has a peak demand of not more
24 than 1,000 kilowatts per hour.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary to carry out this section.

"(e) SAVINGS CLAUSE.—Nothing in this section affects the rights or obligations of any State utility consumer advocate.".

TITLE II—ENERGY EFFICIENCY

Subtitle A—Building Energy Efficiency Programs

SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING CODES.

Section 304 of the Energy Conservation and Production Act (42 U.S.C. 6833) is amended to read as follows:

"SEC. 304. GREATER ENERGY EFFICIENCY IN BUILDING CODES.

"(a) ENERGY EFFICIENCY TARGETS.—

"(1) IN GENERAL.—Except as provided in paragraph (2) or (3), the national building code energy efficiency target for the national average percentage improvement of a building's energy performance when built to a code meeting the target shall be—

"(A) effective on the date of enactment of the American Clean Energy and Security Act of 2009, 30 percent reduction in energy use rel-

ative to a comparable building constructed in compliance with the baseline code;

"(B) effective January 1, 2014, for residential buildings, and January 1, 2015, for commercial buildings, 50 percent reduction in energy use relative to the baseline code; and

"(C) effective January 1, 2017, for residential buildings, and January 1, 2018, for commercial buildings, and every 3 years thereafter, respectively, through January 1, 2029, and January 1, 2030, 5 percent additional reduction in energy use relative to the baseline code.

"(2) CONSENSUS-BASED CODES.—If on any effective date specified in paragraph (1)(A), (B), or (C) a successor code to the baseline codes provides for greater reduction in energy use than is required under paragraph (1), the overall percentage reduction in energy use provided by that successor code shall be the national building code energy efficiency target.

"(3) TARGETS ESTABLISHED BY SECRETARY.—The Secretary may by rule establish a national building code energy efficiency target for residential or commercial buildings achieving greater reductions

in energy use than the targets prescribed in paragraph (1) or (2) if the Secretary determines that such greater reductions in energy use can be achieved with a code that is life cycle cost-justified and technically feasible. The Secretary may by rule establish a national building code energy efficiency target for residential or commercial buildings achieving a reduction in energy use that is greater than zero but less than the targets prescribed in paragraph (1) or (2) if the Secretary determines that such lesser target is the maximum reduction in energy use that can be achieved through a code that is life cycle cost-justified and technically feasible.

"(4) ADDITIONAL REDUCTIONS IN ENERGY USE.—Effective on January 1, 2033, and once every 3 years thereafter, the Secretary shall determine, after notice and opportunity for comment, whether further energy efficiency building code improvements for residential or commercial buildings, respectively, are life cycle cost-justified and technically feasible, and shall establish updated national building code energy efficiency targets that meet such criteria.

"(5) ZERO-NET-ENERGY BUILDINGS.—In setting targets under this subsection, the Secretary shall consider ways to support the deployment of

1 distributed renewable energy technology, and shall
2 seek to achieve the goal of zero-net-energy commer-
3 cial buildings established in section 422 of the En-
4 ergy Independence and Security Act of 2007 (42
5 U.S.C. 17082).

6 "(6) BASELINE CODE.—For purposes of this
7 section, the term 'baseline code' means—

8 "(A) for residential buildings, the 2006
9 International Energy Conservation Code
10 (IECC) published by the International Code
11 Council (ICC); and

12 "(B) for commercial buildings, the code
13 published in ASHRAE Standard 90.1-2004.

14 "(7) CONSULTATION.—In establishing the tar-
15 gets required by this section, the Secretary shall
16 consult with the Director of the National Institute of
17 Standards and Technology.

18 "(b) NATIONAL ENERGY EFFICIENCY BUILDING
19 CODES.—

20 "(1) REQUIREMENT.—

21 "(A) IN GENERAL.—There shall be estab-
22 lished national energy efficiency building codes
23 under this subsection, for residential and com-
24 mercial buildings, sufficient to meet each of the
25 national building code energy efficiency targets

established under subsection (a), not later than the date that is one year after the deadline for establishment of each such target, except that the national energy efficiency building code established to meet the target described in subsection (a)(1)(A) shall be established by not later than 15 months after the effective date of that target.

"(B) EXISTING CODE.—If the Secretary finds prior to the date provided in subparagraph (A) for establishing a national code for any target that one or more energy efficiency building codes published by a recognized developer of national energy codes and standards meet or exceed the established target, the Secretary shall select the code that meets the target with the highest efficiency in the most cost-effective manner, and such code shall be the national energy efficiency building code.

"(C) REQUIREMENT TO ESTABLISH CODE.—If the Secretary does not make a finding under subparagraph (B), the national energy efficiency building code shall be established by rule by the Secretary under paragraph (2).

"(2) ESTABLISHMENT BY SECRETARY.—

"(A) PROCEDURE.—In order to establish a national energy efficiency building code as required under paragraph (1)(C), the Secretary shall—

"(i) not later than six months prior to the effective date for each target, review existing and proposed codes published or under review by recognized developers of national energy codes and standards;

"(ii) determine the percentage of energy efficiency improvements that are or would be achieved in such published or proposed code versions relative to the target;

"(iii) propose improvements to such published or proposed code versions sufficient to meet or exceed the target; and

"(iv) unless a finding is made under paragraph (1)(B) with respect to a code published by a recognized developer of national energy codes and standards, adopt a code that meets or exceeds the relevant national building code energy efficiency target by not later than one year after the effective date of each such target, and by not

later than 15 months after the target is established under subsection (a)(1)(A).

"(B) CALCULATIONS.—Each national energy efficiency building code established by the Secretary under this paragraph shall be set at the maximum level the Secretary determines is life cycle cost-justified and technically feasible, in accordance with the following:

"(i) SAVINGS CALCULATIONS.—Calculations of energy savings shall take into account the typical lifetimes of different products, measures, and system configurations.

"(ii) COST-EFFECTIVENESS CALCULATIONS.—Calculations of life cycle cost-effectiveness shall be based on life cycle cost methods and procedures under section 544 of the National Energy Conservation Policy Act (42 U.S.C. 8254), but shall incorporate to the extent feasible externalities such as impacts on climate change and on peak energy demand that are not already incorporated in assumed energy costs.

"(C) CONSIDERATIONS.—In developing a national energy efficiency building code under this paragraph, the Secretary shall consider—

"(i) for residential national energy efficiency building codes—

"(I) residential building standards published or proposed by ASHRAE;

"(II) building codes published or proposed by the International Code Council (ICC);

"(III) data from the Residential Energy Services Network (RESNET) on compliance measures utilized by consumers to qualify for the residential energy efficiency tax credits established under the Energy Policy Act of 2005;

"(IV) data and information from the Department of Energy's Building America Program;

"(V) data and information from the Energy Star New Homes program;

"(VI) data and information from the New Building Institute and similar organizations; and

"(VII) standards for practices and materials to achieve cool roofs in residential buildings, taking into consideration reduced air conditioning energy use as a function of cool roofs, the potential reduction in global warming from increased solar reflectance from buildings, and cool roofs criteria in State and local building codes and in national and local voluntary programs, without reduction of otherwise applicable ceiling insulation standards; and

"(ii) for commercial national energy efficiency building codes—

"(I) commercial building standards proposed by ASHRAE;

"(II) building codes proposed by the International Code Council (ICC);

"(III) the Core Performance Criteria published by the New Buildings Institute;

"(IV) data and information developed by the Director of the Commercial High-Performance Green Building Office of the Department of Energy and any public-private partnerships established under that Office;

"(V) data and information from the Energy Star for Buildings program;

"(VI) data and information from the New Building Institute, RESNET, and similar organizations; and

"(VII) standards for practices and materials to achieve cool roofs in commercial buildings, taking into consideration reduced air conditioning energy use as a function of cool roofs, the potential reduction in global warming from increased solar reflectance from buildings, and cool roofs criteria in State and local building codes and in national and local voluntary programs, without reduction of

otherwise applicable ceiling insulation standards.

"(D) CONSULTATION.—In establishing any national energy efficiency building code required by this section, the Secretary shall consult with the Director of the National Institute of Standards and Technology.

"(3) CONSENSUS STANDARD ASSISTANCE.—(A) To support the development of consensus standards that may provide the basis for national energy efficiency building codes, minimize duplication of effort, encourage progress through consensus, and facilitate the development of greater building efficiency, the Secretary shall provide assistance to recognized developers of national energy codes and standards to develop, and where the relevant code has been adopted as the national code, disseminate consensus based energy efficiency building codes as provided in this paragraph.

"(B) Upon a finding by the Secretary that a code developed by such a developer meets a target established under subsection (a), the Secretary shall—

"(i) send notice of the Secretary's finding to all duly authorized or appointed State, tribal, and local code agencies; and

"(ii) provide sufficient support to such a developer to make the code available on the Internet, or to accomplish distribution of such code to all such State, tribal, and local code agencies at no cost to the State, tribal, and local code agencies.

"(C) The Secretary may contract with such a developer and with other organizations with expertise on codes to provide training for State, tribal, and local code officials and building inspectors in the implementation and enforcement of such code.

"(D) The Secretary may provide grants and other support to such a developer to—

"(i) develop appropriate refinements to such code; and

"(ii) support analysis of options for improvements in the code to meet the next scheduled target.

"(4) CODE DEVELOPED BY SECRETARY.—If the Secretary establishes a national energy efficiency building code under paragraph (2), the Secretary shall—

"(A) to the extent that such code is based on a prior code developed by a recognized developer of national energy codes and standards, negotiate and provide appropriate compensation to such developer for the use of the code materials that remain in the code established by the Secretary; and

"(B) disseminate the national energy efficiency building codes to State, tribal, and local code officials, and support training and provide guidance and technical assistance to such officials as appropriate.

"(c) STATE ADOPTION OF ENERGY EFFICIENCY BUILDING CODES.—

"(1) REQUIREMENT.—Not later than 1 year after a national energy efficiency building code for residential or commercial buildings is established or revised under subsection (b), each State—

"(A) shall—

"(i) review and update the provisions of its building code regarding energy efficiency to meet or exceed the target met in the new national energy efficiency building code, to achieve equivalent or greater energy savings;

"(ii) document, where local governments establish building codes, that local governments representing not less than 80 percent of the State's urban population have adopted the new national code, or have adopted local codes that meet or exceed the target met in the new national code to achieve equivalent or greater energy savings; or

"(iii) adopt the new national code; and

"(B) shall provide a certification to the Secretary demonstrating that energy efficiency building code provisions that apply pursuant to subparagraph (A) in that State meet or exceed the target met by the new national code, to achieve equivalent or greater energy savings.

"(2) CONFIRMATION.—

"(A) REQUIREMENT.—Not later than 90 days after a State certification is provided under paragraph (1)(B), the Secretary shall determine whether the State's energy efficiency building code provisions meet the requirements of this subsection.

"(B) ACCEPTANCE BY SECRETARY.—If the Secretary determines under subparagraph (A) that the State's energy efficiency building code or codes meet the requirements of this subsection, the Secretary shall accept the certification.

"(C) DEFICIENCY NOTICE.—If the Secretary determines under subparagraph (A) that the State's building code or codes do not meet the requirements of this subsection, the Secretary shall identify the deficiency in meeting the national building code energy efficiency target, and, to the extent possible, indicate areas where further improvement in the State's code provisions would allow the deficiency to be eliminated.

"(D) REVISION OF CODE AND RECERTIFICATION.—A State may revise its code or codes and submit a recertification under paragraph (1)(B) to the Secretary at any time.

"(3) COMPLIANT CODE.—For the purposes of meeting the target described in subsection (a)(1)(A) for residential buildings, a State that adopts the code represented in California's Title 24-2009 by the date 27 months after the date of enactment of the

American Clean Energy and Security Act of 2009 shall be considered to have met the requirements of this subsection for the applicable period.

"(d) APPLICATION OF NATIONAL CODE TO STATE AND LOCAL JURISDICTIONS.—

"(1) IN GENERAL.—Upon the expiration of 18 months after a national energy efficiency building code is established under subsection (b), in any jurisdiction where the State has not had a certification relating to that code accepted by the Secretary under subsection (c)(2)(B), and the local government has not had a certification relating to that code accepted by the Secretary under subsection (e)(5), the national energy efficiency building code shall become the applicable energy efficiency building code for such jurisdiction.

"(2) CONFLICTS.—In the event of a conflict between a provision of the national energy efficiency building code and a provision of other applicable energy codes, the national energy efficiency building code shall apply. If there is a conflict between a provision of the national energy efficiency building code and a provision of any applicable fire code, life safety code, egress code, or accessibility code, the Secretary shall take appropriate actions to resolve such

conflict in a manner that does not compromise the objectives of such codes.

"(3) STATE LEGISLATIVE ADOPTION.—In a State in which the relevant building energy code is adopted legislatively, the deadline in paragraph (1) shall not be earlier than 1 year after the first day that the legislature meets following establishment of a national energy efficiency building code.

"(4) NOTICE OF INTENT TO ENFORCE.—A State or locality that enforces building codes may assume responsibility for enforcing the national energy efficiency building code by notifying the Secretary to that effect not later than three months after the date established under paragraph (1).

"(5) VIOLATIONS.—Violations of this section shall be defined as follows:

"(A) If the building is subject to the requirements of a State energy efficiency building code with respect to which a certification has been accepted by the Secretary under subsection (c)(2)(B) or a local energy efficiency building code with respect to which a certification has been accepted by the Secretary pursuant to subsection (e)(5), or the requirements of the national energy efficiency building code

in a State where the State or locality has notified the Secretary of its intent to enforce the provisions of the national energy efficiency building code, a violation shall be determined pursuant to the relevant provisions of State or local law.

"(B) If the building is subject to the requirements of a national energy efficiency building code made applicable under paragraph (1) of this subsection, except as provided in subparagraph (A), a violation shall be defined by the Secretary pursuant to subsection (g).

"(e) STATE ENFORCEMENT OF ENERGY EFFICIENCY BUILDING CODES.—

"(1) IN GENERAL.—Each State, or where applicable under State law each local government, shall implement and enforce applicable State or local codes with respect to which a certification was accepted by the Secretary under subsection (c)(2)(B) or paragraph (5) of this subsection, or the national energy efficiency building codes, as provided in this subsection.

"(2) STATE CERTIFICATION.—Not later than 2 years after the date of a certification under subsection (c)(1) or the application of a national energy

efficiency building code under subsection (d)(1), each State shall certify that it has—

"(A) achieved compliance with—

"(i) State codes, or, as provided under State law, local codes, with respect to which a certification was accepted by the Secretary under subsection (c)(2)(B); or

"(ii) the national energy efficiency building code, as applicable; or

"(B) for any certification submitted within 7 years after the date of enactment of the American Clean Energy and Security Act of 2009, made significant progress toward achieving such compliance.

"(3) ACHIEVING COMPLIANCE.—A State shall be considered to achieve compliance with a code described in paragraph (2)(A) if at least 90 percent of new and substantially renovated building space in that State in the preceding year upon inspection meets the requirements of the code. A certification under paragraph (2) shall include documentation of the rate of compliance based on—

"(A) independent inspections of a random sample of the new and substantially renovated

1 buildings covered by the code in the preceding
2 year; or
3 "(B) an alternative method that yields an
4 accurate measure of compliance as determined
5 by the Secretary.
6 "(4) SIGNIFICANT PROGRESS.—A State shall be
7 considered to have made significant progress toward
8 achieving compliance with a code described in para-
9 graph (2)(A) if—
10 "(A) the State has developed a plan, in-
11 cluding for hiring enforcement staff, providing
12 training, providing manuals and checklists, and
13 instituting enforcement programs, designed to
14 achieve full compliance within 5 years after the
15 date of the adoption of the code;
16 "(B) the State is taking significant, timely,
17 and measurable action to implement that plan;
18 "(C) the State has not reduced its expendi-
19 tures for code enforcement; and
20 "(D) at least 50 percent of new and sub-
21 stantially renovated building space in the State
22 in the preceding year upon inspection meets the
23 requirements of the code.
24 "(5) SECRETARY'S DETERMINATION.—Not later
25 than 90 days after a State certification under para-

graph (2), the Secretary shall determine whether the State has demonstrated that it has complied with the requirements of this subsection, including accurate measurement of compliance, or that it has made significant progress toward compliance. If such determination is positive, the Secretary shall accept the certification. If the determination is negative, the Secretary shall identify the areas of deficiency.

"(6) OUT OF COMPLIANCE.—

"(A) IN GENERAL.—Any State for which the Secretary has not accepted a certification under paragraph (5) by the dates specified in paragraph (2) is out of compliance with this section.

"(B) LOCAL COMPLIANCE.—In any State that is out of compliance with this section as provided in subparagraph (A), a local government may be in compliance with this section by meeting all certification requirements of this subsection.

"(C) NONCOMPLIANCE.—Any State that is not in compliance with this section, as provided in subparagraph (A), shall, until the State regains such compliance, be ineligible to receive—

"(i) emission allowances pursuant to subsection (h)(1);

"(ii) Federal funding in excess of that State's share (calculated according to the allocation formula in section 363 of the Energy Policy and Conservation Act (42 U.S.C. 6323)) of $125,000,000 each year; and

"(iii) for—

"(I) the first year for which the State is out of compliance, 25 percent of any additional funding or other items of monetary value otherwise provided under the American Clean Energy and Security Act of 2009;

"(II) the second year for which the State is out of compliance, 50 percent of any additional funding or other items of monetary value otherwise provided under the American Clean Energy and Security Act of 2009;

"(III) the third year for which the State is out of compliance, 75 percent of any additional funding or

other items of monetary value otherwise provided under the American Clean Energy and Security Act of 2009; and

"(IV) the fourth and subsequent years for which the State is out of compliance, 100 percent of any additional funding or other items of monetary value otherwise provided under the American Clean Energy and Security Act of 2009.

"(f) FEDERAL ENFORCEMENT AND TRAINING.—Where a State fails and local governments in that State also fail to enforce the applicable State or national energy efficiency building codes, the Secretary shall enforce such codes, as follows:

"(1) The Secretary shall establish, by rule, within 2 years after the date of enactment of the American Clean Energy and Security Act of 2009, an energy efficiency building code enforcement capability.

"(2) Such enforcement capability shall be designed to achieve 90 percent compliance with such code in any State within 1 year after the date of the

Secretary's determination that such State is out of compliance with this section.

"(3) The Secretary may set and collect reasonable inspection fees to cover the costs of inspections required for such enforcement. Revenue from fees collected shall be available to the Secretary to carry out the requirements of this section upon appropriation.

"(4) In any jurisdiction to which this subsection applies, the Secretary shall coordinate enforcement of the national energy efficiency building code with State and local code enforcement of other building codes.

"(5) In any jurisdiction to which this subsection applies, the Secretary shall enhance compliance by conducting training and education of builders and other professionals in the jurisdiction concerning the national energy efficiency building code.

"(6) The Secretary shall coordinate with professional organizations representing code officials, architects, engineers, builders, and other experts to develop training curricula concerning the national energy efficiency building code.

1 "(7) If the Secretary enforces such codes under
2 this subsection, the Secretary may, as appropriate,
3 redefine violations of such codes.

4 "(g) ENFORCEMENT PROCEDURES.—The Secretary
5 shall propose and, not later than three years after the date
6 of enactment of the American Clean Energy and Security
7 Act of 2009, shall define by rule violations of the energy
8 efficiency building codes to be enforced by the Secretary
9 pursuant to this section, and the penalties that shall apply
10 to violators, in any jurisdiction in which the national en-
11 ergy efficiency building code has been made applicable
12 under subsection (d)(1). To the extent that the Secretary
13 determines that the authority to adopt and impose such
14 violations and penalties by rule requires further statutory
15 authority, the Secretary shall report such determination
16 to Congress as soon as such determination is made, but
17 not later than one year after the enactment of the Amer-
18 ican Clean Energy and Security Act of 2009.

19 "(h) FEDERAL SUPPORT.—

20 "(1) ALLOWANCE ALLOCATION FOR STATE
21 COMPLIANCE.—For each vintage year from 2012
22 through 2050, the Administrator shall distribute al-
23 lowances allocated pursuant to section 782(g)(2) of
24 the Clean Air Act to the SEED Account for each

State. Such allowances shall be distributed according to a formula established by the Secretary as follows:

"(A) One-fifth in an equal amount to each of the 50 States and United States territories.

"(B) Two-fifths as a function of the relative energy use in all buildings in each State in the most recent year for which data is available.

"(C) Two-fifths based on the number of building construction starts recorded in each State, the number of new building permits applied for in each State, or other relevant available data indicating building activity in each State, in the judgment of the Secretary, for the year prior to the year of the distribution.

"(2) ALLOWANCE ALLOCATION TO LOCAL GOVERNMENTS.—In the instance that the Secretary certifies that one or more local governments are in compliance with this section pursuant to subsection (e)(6)(B), the Administrator shall provide to each such local government the portion of the emission allowances that would have been provided to that State as a function of the population of that locality as a proportion of the population of that State as a whole.

"(3) UNALLOCATED ALLOWANCES.—To the extent that allowances are not provided to State or local governments for lack of certification in any year, those allowances shall be added to the amount provided to those States and local governments that are certified as eligible in that year.

"(4) USE OF ALLOWANCES.—Each State or each local government shall use such emission allowances as it receives pursuant to this section exclusively for the purposes of this section, including covering a reasonable portion of the costs of the development, adoption, implementation, and enforcement of a State or local energy efficiency building code that meets the national building code energy efficiency targets, or the national energy efficiency building code. In a State where local governments provide substantially all building code enforcement, a minimum of 50 percent of the allowance value received pursuant to this section shall be distributed to local governments as a function of the relative populations of such localities. In a State where local and State governments share building code enforcement duties, the State and local shares of allowance value required for enforcement shall be allocated in proportion to the number of building inspections per-

formed by each level of government, and the share for local governments shall be distributed as a function of the relative populations of such localities. States shall further ensure that the allowance value made available pursuant to section 782 of the Clean Air Act and section 132 of the American Clean Energy and Security Act of 2009 is provided to the applicable State or local governmental entities as necessary to adopt and implement energy efficiency building codes, provide training for inspectors, ensure compliance, and provide such other functions as necessary. Actions taken by local authorities pursuant to this section shall constitute an acceptable use of funds authorized pursuant to the Energy Efficiency and Conservation Block Grant program under section 544 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17154).

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy $25,000,000, and such additional sums as may be necessary to provide enforcement of a national energy efficiency building code, for each of fiscal years 2010 through 2020, and such sums thereafter as may be necessary to support the purposes of this section.

"(j) ANNUAL REPORTS BY SECRETARY.—The Secretary shall annually submit to Congress, and publish in the Federal Register, a report on—

"(1) the status of national energy efficiency building codes;

"(2) the status of energy efficiency building code adoption and compliance in the States;

"(3) the implementation of this section;

"(4) the status of Federal enforcement of building codes, including coordination with State and local enforcement, and the extent and resolution of any conflicts between the national energy efficiency building code and other residential and commercial building codes in force in the same jurisdictions; and

"(5) impacts of past action under this section, and potential impacts of further action, on lifetime energy use by buildings, including resulting energy and cost savings.".

SEC. 202. BUILDING RETROFIT PROGRAM.

(a) DEFINITIONS.—For purposes of this section:

(1) ASSISTED HOUSING.—The term "assisted housing" means those properties receiving project-based assistance pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), section 811 of the Cranston-Gonzalez National Affordable

Housing Act (42 U.S.C. 8013), section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or similar programs.

(2) NONRESIDENTIAL BUILDING.—The term ''nonresidential building'' means a building with a primary use or purpose other than residential housing, including any building used for commercial offices, schools, academic and other public and private institutions, nonprofit organizations including faith-based organizations, hospitals, hotels, and other nonresidential purposes. Such buildings shall include mixed-use properties used for both residential and nonresidential purposes in which more than half of building floor space is nonresidential.

(3) PERFORMANCE-BASED BUILDING RETROFIT PROGRAM.—The term ''performance-based building retrofit program'' means a program that determines building energy efficiency success based on actual measured savings after a retrofit is complete, as evidenced by energy invoices or evaluation protocols.

(4) PRESCRIPTIVE BUILDING RETROFIT PROGRAM.—The term ''prescriptive building retrofit program'' means a program that projects building retrofit energy efficiency success based on the known

effectiveness of measures prescribed to be included in a retrofit.

(5) PUBLIC HOUSING.—The term ''public housing'' means properties receiving assistance under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g).

(6) RECOMMISSIONING; RETROCOMMISSIONING.—The terms ''recommissioning'' and ''retrocommissioning'' have the meaning given those terms in section 543(f)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(f)(1)).

(7) RESIDENTIAL BUILDING.—The term ''residential building'' means a building whose primary use is residential. Such buildings shall include single-family homes (both attached and detached), owner-occupied units in larger buildings with their own dedicated space-conditioning systems, apartment buildings, multi-unit condominium buildings, public housing, assisted housing, and buildings used for both residential and nonresidential purposes in which more than half of building floor space is residential.

(8) STATE ENERGY PROGRAM.—The term ''State Energy Program'' means the program under

1 part D of title III of the Energy Policy and Con-
2 servation Act (42 U.S.C. 6321 et seq.).
3 (b) ESTABLISHMENT.—The Administrator shall de-
4 velop and implement, in consultation with the Secretary
5 of Energy, standards for a national energy and environ-
6 mental building retrofit policy for single-family and multi-
7 family residences. The Administrator shall develop and
8 implement, in consultation with the Secretary of Energy
9 and the Director of Commercial High-Performance Green
10 Buildings, standards for a national energy and environ-
11 mental building retrofit policy for nonresidential buildings.
12 The programs to implement the residential and nonresi-
13 dential policies based on the standards developed under
14 this section shall together be known as the Retrofit for
15 Energy and Environmental Performance (REEP) pro-
16 gram.
17 (c) PURPOSE.—The purpose of the REEP program
18 is to facilitate the retrofitting of existing buildings across
19 the United States to achieve maximum cost-effective en-
20 ergy efficiency improvements and significant improve-
21 ments in water use and other environmental attributes.
22 (d) FEDERAL ADMINISTRATION.—
23 (1) EXISTING PROGRAMS.—In creating and op-
24 erating the REEP program—

(A) the Administrator shall make appropriate use of existing programs, including the Energy Star program and in particular the Environmental Protection Agency Energy Star for Buildings program; and

(B) the Secretary of Energy shall make appropriate use of existing programs, including delegating authority to the Director of Commercial High-Performance Green Buildings appointed under section 421 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17081), who shall designate and provide funding to support a high-performance green building partnership consortium pursuant to subsection (f) of such section to support efforts under this section.

(2) CONSULTATION AND COORDINATION.—The Administrator and the Secretary of Energy shall consult with and coordinate with the Secretary of Housing and Urban Development in carrying out the REEP program with regard to retrofitting of public housing and assisted housing. As a result of such consultation, the Administrator shall establish standards to ensure that retrofits of public housing and assisted housing funded pursuant to this section are

cost-effective, including opportunities to address the potential co-performance of repair and replacement needs that may be supported with other forms of Federal assistance.

(3) ASSISTANCE.—The Administrator and the Secretary of Energy shall provide consultation and assistance to State and local agencies for the establishment of revolving loan funds, loan guarantees, or other forms of financial assistance under this section.

(e) STATE AND LOCAL ADMINISTRATION.—

(1) DESIGNATION AND DELEGATION.—A State may designate one or more agencies or entities, including those regulated by the State, to carry out the purposes of this section, but shall designate one entity or individual as the principal point of contact for the Administrator regarding the REEP Program. The designated State agency, agencies, or entities may delegate performance of appropriate elements of the REEP program, upon their request and subject to State law, to counties, municipalities, appropriate public agencies, and other divisions of local government, as well as to entities regulated by the State. In making any such designation or delegation, a State shall give priority to entities that ad-

1 minister existing comprehensive retrofit programs,
2 including those under the supervision of State utility
3 regulators. States shall maintain responsibility for
4 meeting the standards and requirements of the
5 REEP program. In any State that elects not to ad-
6 minister the REEP program, a unit of local govern-
7 ment may propose to do so within its jurisdiction,
8 and if the Administrator finds that such local gov-
9 ernment is capable of administering the program,
10 the Administrator may provide allowances to that
11 local government, prorated according to the popu-
12 lation of the local jurisdiction relative to the popu-
13 lation of the State, for purposes of the REEP pro-
14 gram.

15 (2) EMPLOYMENT.—States and local govern-
16 ment entities may administer a REEP program in
17 a manner that authorizes public or regulated inves-
18 tor-owned utilities, building auditors and inspectors,
19 contractors, nonprofit organizations, for-profit com-
20 panies, and other entities to perform audits and ret-
21 rofit services under this section. A State may pro-
22 vide incentives for retrofits without direct participa-
23 tion by the State or its agents, so long as the result-
24 ing savings are measured and verified. A State or
25 local administrator of a REEP program shall seek

to ensure that sufficient qualified entities are available to support retrofit activities so that building owners have a competitive choice among qualified auditors, raters, contractors, and providers of services related to retrofits. Nothing in this section is intended to deny the right of a building owner to choose the specific providers of retrofit services to engage for a retrofit project in that owner's building.

(3) EQUAL INCENTIVES FOR EQUAL IMPROVEMENT.—In general, the States should strive to offer the same levels of incentives for retrofits that meet the same efficiency improvement goals, regardless of whether the State, its agency or entity, or the building owner has conducted the retrofit achieving the improvement, provided the improvement is measured and verified.

(f) ELEMENTS OF REEP PROGRAM.—The Administrator, in consultation with the Secretary of Energy, shall establish goals, guidelines, practices, and standards for accomplishing the purpose stated in subsection (c), and shall annually review and, as appropriate, revise such goals, guidelines, practices, and standards. The program under this section shall include the following:

(1) Residential Energy Services Network (RESNET) or Building Performance Institute

(BPI) analyst certification of residential building energy and environment auditors, inspectors, and raters, or an equivalent certification system as determined by the Administrator.

(2) BPI certification or licensing by States of residential building energy and environmental retrofit contractors, or an equivalent certification or licensing system as determined by the Administrator.

(3) Provision of BPI, RESNET, or other appropriate information on equipment and procedures, as determined by the Administrator, that contractors can use to test the energy and environmental efficiency of buildings effectively (such as infrared photography and pressurized testing, and tests for water use and indoor air quality).

(4) Provision of clear and effective materials to describe the testing and retrofit processes for typical buildings.

(5) Guidelines for offering and managing prescriptive building retrofit programs and performance-based building retrofit programs for residential and nonresidential buildings.

(6) Guidelines for applying recommissioning and retrocommissioning principles to improve a building's operations and maintenance procedures.

(7) A requirement that building retrofits conducted pursuant to a REEP program utilize, especially in all air-conditioned buildings, roofing materials with high solar energy reflectance, unless inappropriate due to green roof management, solar energy production, or for other reasons identified by the Administrator, in order to reduce energy consumption within the building, increase the albedo of the building's roof, and decrease the heat island effect in the area of the building, without reduction of otherwise applicable ceiling insulation standards.

(8) Determination of energy savings in a performance-based building retrofit program through—

(A) for residential buildings, comparison of before and after retrofit scores on the Home Energy Rating System (HERS) Index, where the final score is produced by an objective third party;

(B) for nonresidential buildings, Environmental Protection Agency Portfolio Manager benchmarks; or

(C) for either residential or nonresidential buildings, use of an Administrator-approved simulation program by a contractor with the appropriate certification, subject to appropriate

software standards and verification of at least 15 percent of all work done, or such other percentage as the Administrator may determine.

(9) Guidelines for utilizing the Energy Star Portfolio Manager, the Home Energy Rating System (HERS) rating system, Home Performance with Energy Star program approvals, and any other tools associated with the retrofit program.

(10) Requirements and guidelines for post-retrofit inspection and confirmation of work and energy savings.

(11) Detailed descriptions of funding options for the benefit of State and local governments, along with model forms, accounting aids, agreements, and guides to best practices.

(12) Guidance on opportunities for—

(A) rating or certifying retrofitted buildings as Energy Star buildings, or as green buildings under a recognized green building rating system;

(B) assigning Home Energy Rating System (HERS) or similar ratings; and

(C) completing any applicable building performance labels.

(13) Sample materials for publicizing the program to building owners, including public service announcements and advertisements.

(14) Processes for tracking the numbers and locations of buildings retrofitted under the REEP program, with information on projected and actual savings of energy and its value over time.

(g) REQUIREMENTS.—As a condition of receiving allowances for the REEP program pursuant to this Act, a State or qualifying local government shall—

(1) adopt the standards for training, certification of contractors, certification of buildings, and post-retrofit inspection as developed by the Administrator for residential and nonresidential buildings, respectively, except as necessary to match local conditions, needs, efficiency opportunities, or other local factors, or to accord with State laws or regulations, and then only after the Administrator approves such a variance; and

(2) establish fiscal controls and accounting procedures (which conform to generally accepted government accounting principles) sufficient to ensure proper accounting during appropriate accounting periods for payments received and disbursements, and for fund balances.

1 The Administrator shall conduct or require each State to
2 have such independent financial audits of REEP-related
3 funding as the Administrator considers necessary or ap-
4 propriate to carry out the purposes of this section.

5 (h) OPTIONS TO SUPPORT REEP PROGRAM.—The
6 emission allowances provided pursuant to this Act to the
7 States SEED Accounts shall support the implementation
8 through State REEP programs of alternate means of cre-
9 ating incentives for, or reducing financial barriers to, im-
10 proved energy and environmental performance in build-
11 ings, consistent with this section, including—

12 (1) implementing prescriptive building retrofit
13 programs and performance-based building retrofit
14 programs;

15 (2) providing credit enhancement, interest rate
16 subsidies, loan guarantees, or other credit support;

17 (3) providing initial capital for public revolving
18 fund financing of retrofits, with repayments by bene-
19 ficiary building owners over time through their tax
20 payments, calibrated to create net positive cash flow
21 to the building owner;

22 (4) providing funds to support utility-operated
23 retrofit programs with repayments over time
24 through utility rates, calibrated to create net positive
25 cash flow to the building owner, and transferable

from one building owner to the next with the building's utility services;

(5) providing funds to local government programs to provide REEP services and financial assistance; and

(6) other means proposed by State and local agencies, subject to the approval of the Administrator.

(i) SUPPORT FOR PROGRAM.—

(1) USE OF ALLOWANCES.—Direct Federal support for the REEP program is provided through the emission allowances allocated to the States' SEED Accounts pursuant to section 132 of this Act. To the extent that a State provides allowances to local governments within the State to implement elements of the REEP Program, that shall be deemed a distribution of such allowances to units of local government pursuant to subsection (c)(1) of that section.

(2) INITIAL AWARD LIMITS.—Except as provided in paragraph (3), State and local REEP programs may make per-building direct expenditures for retrofit improvements, or their equivalent in indirect or other forms of financial support, from funds derived from the sale of allowances received directly

from the Administrator in amounts not to exceed the following amounts per unit:

(A) RESIDENTIAL BUILDING PROGRAM.—

(i) AWARDS.—For residential buildings—

(I) support for a free or low-cost detailed building energy audit that prescribes measures sufficient to achieve at least a 20 percent reduction in energy use, by providing an incentive equal to the documented cost of such audit, but not more than $200, in addition to any earned by achieving a 20 percent or greater efficiency improvement;

(II) a total of $1,000 for a combination of measures, prescribed in an audit conducted under subclause (I), designed to reduce energy consumption by more than 10 percent, and $2,000 for a combination of measures prescribed in such an audit, designed to reduce energy consumption by more than 20 percent;

(III) $3,000 for demonstrated savings of 20 percent, pursuant to a performance-based building retrofit program; and

(IV) $1,000 for each additional 5 percentage points of energy savings achieved beyond savings for which funding is provided under subclause (II) or (III).

Funding shall not be provided under clauses (II) and (III) for the same energy savings.

(ii) MAXIMUM PERCENTAGE.—Awards under clause (i) shall not exceed 50 percent of retrofit costs for each building. For buildings with multiple residential units, awards under clause (i) shall not be greater than 50 percent of the total cost of retrofitting the building, prorated among individual residential units on the basis of relative costs of the retrofit. In the case of public housing and assisted housing, the 50 percent contribution matching the contribution from REEP program funds may

1 come from any other source, including
2 other Federal funds.
3 (iii) ADDITIONAL AWARDS.—Addi-
4 tional awards may be provided for pur-
5 poses of increasing energy efficiency, for
6 buildings achieving at least 20 percent en-
7 ergy savings using funding provided under
8 clause (i), in the form of grants of not
9 more than $600 for measures projected or
10 measured (using an appropriate method
11 approved by the Administrator) to achieve
12 at least 35 percent potable water savings
13 through equipment or systems with an es-
14 timated service life of not less than seven
15 years, and not more than an additional
16 $20 may be provided for each additional
17 one percent of such savings, up to a max-
18 imum total grant of $1,200.
19 (B) NONRESIDENTIAL BUILDING PRO-
20 GRAM.—
21 (i) AWARDS.—For nonresidential
22 buildings—
23 (I) support for a free or low-cost
24 detailed building energy audit that
25 prescribes, as part of a energy-reduc-

ing measures sufficient to achieve at least a 20 percent reduction in energy use, by providing an incentive equal to the documented cost of such audit, but not more than $500, in addition to any award earned by achieving a 20 percent or greater efficiency improvement;

(II) $0.15 per square foot of retrofit area for demonstrated energy use reductions from 20 percent to 30 percent;

(III) $0.75 per square foot for demonstrated energy use reductions from 30 percent to 40 percent;

(IV) $1.60 per square foot for demonstrated energy use reductions from 40 percent to 50 percent; and

(V) $2.50 per square foot for demonstrated energy use reductions exceeding 50 percent.

(ii) MAXIMUM PERCENTAGE.—Amounts provided under subclauses (II) through (V) of clause (i) combined shall not exceed 50 percent of the total retrofit

cost of a building. In nonresidential buildings with multiple units, such awards shall be prorated among individual units on the basis of relative costs of the retrofit.

(iii) ADDITIONAL AWARDS.—Additional awards may be provided, for buildings achieving at least 20 percent energy savings using funding provided under clause (i), as follows:

(I) WATER.—For purposes of increasing energy efficiency, grants may be made for whole building potable water use reduction (using an appropriate method approved by the Administrator) for up to 50 percent of the total retrofit cost, including amounts up to—

(aa) $24.00 per thousand gallons per year of potable water savings of 40 percent or more;

(bb) $27.00 per thousand gallons per year of potable water savings of 50 percent or more; and

(cc) $30.00 per thousand gallons per year of potable water savings of 60 percent or more.

(II) ENVIRONMENTAL IMPROVEMENTS.—Additional awards of up to $1,000 may be granted for the inclusion of other environmental attributes that the Administrator, in consultation with the Secretary, identifies as contributing to energy efficiency. Such attributes may include, but are not limited to waste diversion and the use of environmentally preferable materials (including salvaged, renewable, or recycled materials, and materials with no or low-VOC content). The Administrator may recommend that States develop such standards as are necessary to account for local or regional conditions that may affect the feasibility or availability of identified resources and attributes.

(iv) INDOOR AIR QUALITY MINIMUM.—Nonresidential buildings receiving incentives under this section must satisfy at a

minimum the most recent version of ASHRAE Standard 62.1 for ventilation, or the equivalent as determined by the Administrator. A State may issue a waiver from this requirement to a building project on a showing that such compliance is infeasible due to the physical constraints of the building's existing ventilation system, or such other limitations as may be specified by the Administrator.

(C) HISTORIC BUILDINGS.—Notwithstanding subparagraphs (A) and (B), a building in or eligible for the National Register of Historic Places shall be eligible for awards under this paragraph in amounts up to 120 percent of the amounts set forth in subparagraphs (A) and (B).

(D) SUPPLEMENTAL SUPPORT.—State and local governments may supplement the per-building expenditures under this paragraph with funding from other sources.

(3) ADJUSTMENT.—The Administrator may adjust the specific dollar limits funded by the sale of allowances pursuant to paragraph (2) in years subsequent to the second year after the date of enact-

ment of this Act, and every 2 years thereafter, as the Administrator determines necessary to achieve optimum cost-effectiveness and to maximize incentives to achieve energy efficiency within the total building award amounts provided in that paragraph, and shall publish and hold constant such revised limits for at least 2 years. The Administrator, in consultation with the Secretary of Housing and Urban Development, may establish different dollar limits for public housing and assisted housing than for other residential buildings.

(j) REPORT TO CONGRESS.—The Administrator shall conduct an annual assessment of the achievements of the REEP program in each State, shall prepare an annual report of such achievements and any recommendations for program modifications, and shall provide such report to Congress at the end of each fiscal year during which funding or other resources were made available to the States for the REEP Program.

(k) OTHER SOURCES OF FEDERAL SUPPORT.—

(1) ADDITIONAL STATE ENERGY PROGRAM FUNDS.—Any Federal funding provided to a State Energy Program that is not required to be expended for a different federally designated purpose may be used to support a REEP program.

(2) PROGRAM ADMINISTRATION.—State Energy Offices or designated State agencies may expend up to 10 percent of available allowance value provided under this section for program administration.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section, for each of fiscal years 2010, 2011, 2012, and 2013—

(A) $50,000,000 to the Administrator for program administration costs; and

(B) $20,000,000 to the Secretary of Energy for program administration costs.

SEC. 203. ENERGY EFFICIENT MANUFACTURED HOMES.

(a) DEFINITIONS.—In this section:

(1) MANUFACTURED HOME.—The term ''manufactured home'' has the meaning given such term in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(2) ENERGY STAR QUALIFIED MANUFACTURED HOME.—The term ''Energy Star qualified manufactured home'' means a manufactured home that has been designed, produced, and installed in accordance with Energy Star's guidelines by an Energy Star certified plant.

(b) PURPOSE.—The purpose of this section is to assist low-income households residing in manufactured homes constructed prior to 1976 to save energy and energy expenditures by providing support toward the purchase of new Energy Star qualified manufactured homes.

(c) STATE IMPLEMENTATION OF PROGRAM.—

(1) MANUFACTURED HOME REPLACEMENT PROGRAM.—Any State may provide to the owner of a manufactured home constructed prior to 1976 a rebate to use toward the purchase of a new Energy Star qualified manufactured home pursuant to this section.

(2) USE OF ALLOWANCES.—Direct Federal support for the program established in this section is provided through the emission allowances allocated to the States' SEED Accounts pursuant to section 132 of this Act. To the extent that a State provides allowances to local governments within the State to implement this program, that shall be deemed a distribution of such allowances to units of local government pursuant to subsection (c)(1) of that section.

(3) REBATES.—

(A) PRIMARY RESIDENCE REQUIREMENT.—A rebate described under paragraph (1) may only be made to an owner of a manu-

factured home constructed prior to 1976 that is used on a year-round basis as a primary residence.

(B) DISMANTLING AND REPLACEMENT.—A rebate described under paragraph (1) may be made only if the manufactured home constructed prior to 1976 will be—

(i) rendered unusable for human habitation (including appropriate recycling); and

(ii) replaced, in the same general location, as determined by the applicable State agency, with an Energy Star qualified manufactured home.

(C) SINGLE REBATE.—A rebate described under paragraph (1) may not be provided to any owner of a manufactured home constructed prior to 1976 that was or is a member of a household for which any other member of the household was provided a rebate pursuant to this section.

(D) ELIGIBLE HOUSEHOLDS.—To be eligible to receive a rebate described under paragraph (1), an owner of a manufactured home constructed prior to 1976 shall demonstrate to

the applicable State agency that the total income of all members the owner's household does not exceed 200 percent of the Federal poverty level for income in the applicable area.

(E) ADVANCE AVAILABILITY.—A rebate may be provided under this section in a manner to facilitate the purchase of a new Energy Star qualified manufactured home.

(4) REBATE LIMITATION.—Rebates provided by States under this section shall not exceed $7,500 per manufactured home from any value derived from the use of emission allowances provided to the State pursuant to section 132.

(5) USE OF STATE FUNDS.—A State providing rebates under this section may supplement the amount of such rebates under paragraph (4) by any additional amount is from State funds and other sources, including private donations or grants from charitable organizations.

(6) COORDINATION WITH SIMILAR PROGRAMS.—

(A) STATE PROGRAMS.—A State conducting an existing program that has the purpose of replacing manufactured homes constructed prior to 1976 with Energy Star quali-

fied manufactured homes, may use allowance value provided under section 782 of the Clean Air Act to support such a program, provided such funding does not exceed the rebate limitation amount under paragraph (4).

(B) FEDERAL PROGRAMS.—The Secretary of Energy shall coordinate with and seek to achieve the purpose of this section through similar Federal programs including—

(i) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.); and

(ii) the program under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

(C) COORDINATION WITH OTHER STATE AGENCIES.—A State agency using allowance value to administer the program under this section may coordinate its efforts, and share funds for administration, with other State agencies involved in low-income housing programs.

(7) ADMINISTRATIVE EXPENSES.—A State using allowance value under this section may expend

not more than 10 percent of such value for administrative expenses related to this program.

SEC. 204. BUILDING ENERGY PERFORMANCE LABELING PROGRAM.

(a) ESTABLISHMENT.—

(1) PURPOSE.—The Administrator shall establish a building energy performance labeling program with broad applicability to the residential and commercial markets to enable and encourage knowledge about building energy performance by owners and occupants and to inform efforts to reduce energy consumption nationwide.

(2) COMPONENTS.—In developing such program, the Administrator shall—

(A) consider existing programs, such as Environmental Protection Agency's Energy Star program, the Home Energy Rating System (HERS) Index, and programs at the Department of Energy;

(B) support the development of model performance labels for residential and commercial buildings; and

(C) utilize incentives and other means to spur use of energy performance labeling of public and private sector buildings nationwide.

(b) DATA ASSESSMENT FOR BUILDING ENERGY PERFORMANCE.—

(1) INITIAL REPORT.—Not later than 90 days after the date of enactment of this Act, the Administrator shall provide to Congress, as well as to the Secretary of Energy and the Office of Management and Budget, a report identifying—

(A) all principal building types for which statistically significant energy performance data exists to serve as the basis of measurement protocols and labeling requirements for achieved building energy performance; and

(B) those building types for which additional data are required to enable the development of such protocols and requirements.

(2) ADDITIONAL REPORTS.—Additional updated reports shall be provided under this subsection as often as The Administrator considers practicable, but not less than every 2 years.

(c) BUILDING DATA ACQUISITION.—

(1) RESOURCE REQUIREMENTS.—For all principal building types identified under subsection (b), the Secretary of Energy, not later than 90 days after a report by the Administrator under subsection (b), shall provide to Congress, the Administrator,

and the Office of Management and Budget a statement of additional resources needed, if any, to fully develop the relevant data, as well as the anticipated timeline for data development.

(2) CONSULTATION.—The Secretary of Energy shall consult with the Administrator concerning the Administrator's ability to use data series for these additional building types to support the achieved performance component in the labeling program.

(3) IMPROVEMENTS TO BUILDING ENERGY CONSUMPTION DATABASES.—

(A) COMMERCIAL DATABASE.—The Secretary of Energy shall support improvements to the Commercial Buildings Energy Consumption Survey (CBECS) as authorized by section 205(k) of the Department of Energy Organization Act (42 U.S.C. 7135(k))—

(i) to enable complete and robust data for the actual energy performance of principal building types currently covered by survey;

(ii) to cover additional building types as identified by the Administrator under subsection (b)(1)(B), to enable the development of achieved performance measure-

ment protocols are developed for at least 90 percent of all major commercial building types within 5 years after the date of enactment of this Act; and

(iii) to include third-party audits of random data samplings to ensure the quality and accuracy of survey information.

(B) RESIDENTIAL DATABASES.—The Administrator, in consultation with the Energy Information Administration and the Secretary of Energy, shall support improvements to the Residential Energy Consumption Survey (RECS) as authorized by section 205(k) of the Department of Energy Organization Act (42 U.S.C. 7135(k)), or such other residential energy performance databases as the Administrator considers appropriate, to aid the development of achieved performance measurement protocols for residential building energy use for at least 90 percent of the residential market within 5 years after the date of enactment of this Act.

(C) CONSULTATION.—The Secretary of Energy and the Administrator shall consult with public, private, and nonprofit sector representatives from the building industry and real

estate industry to assist in the evaluation and improvement of building energy performance databases and labeling programs.

(d) IDENTIFICATION OF MEASUREMENT PROTOCOLS FOR ACHIEVED PERFORMANCE.—

(1) PROPOSED PROTOCOLS AND REQUIREMENTS.—At the earliest practicable date, but not later than 1 year after identifying a building type under subsection (b)(1)(A), the Administrator shall propose a measurement protocol for that building type and a requirement detailing how to use that protocol in completing applicable commercial or residential performance labels created pursuant to this section.

(2) FINAL RULE.—After providing for notice and comment, the Administrator shall publish a final rule containing a measurement protocol and the corresponding requirements for applying that protocol. Such a rule—

(A) shall define the minimum period for measurement of energy use by buildings of that type and other details for determining achieved performance, to include leased buildings or parts thereof;

(B) shall identify necessary data collection and record retention requirements; and

(C) may specify transition rules and exemptions for classes of buildings within the building type.

(e) PROCEDURES FOR EVALUATING DESIGNED PERFORMANCE.—The Administrator shall develop protocols for evaluating the designed performance of individual building types. The Administrator may conduct such feasibility studies and demonstration projects as are necessary to evaluate the sufficiency of proposed protocols for designed performance.

(f) CREATION OF BUILDING ENERGY PERFORMANCE LABELING PROGRAM.—

(1) MODEL LABEL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall propose a model building energy label that provides a format—

(A) to display achieved performance and designed performance data;

(B) that may be tailored for residential and commercial buildings, and for single-occupancy and multitenanted buildings; and

(C) to display other appropriate elements identified during the development of measurement protocols under subsections (d) and (e).

(2) INCLUSIONS.—Nothing in this section shall require the inclusion on such a label of designed performance data where impracticable or not cost effective, or to preclude the display of both achieved performance and designed performance data for a particular building where both such measures are available, practicable, and cost effective.

(3) EXISTING PROGRAMS.—In developing the model label, the Administrator shall consider existing programs, including—

(A) the Environmental Protection Agency's Energy Star Portfolio Manager program and the California HERS II Program Custom Approach for the achieved performance component of the label;

(B) the Home Energy Rating System (HERS) Index system for the designed performance component of the label; and

(C) other Federal and State programs, including the Department of Energy's related programs on building technologies and those of the Federal Energy Management Program.

(4) FINAL RULE.—After providing for notice and comment, the Administrator shall publish a final rule containing the label applicable to covered building types.

(g) DEMONSTRATION PROJECTS FOR LABELING PROGRAM.—

(1) IN GENERAL.—The Administrator shall conduct building energy performance labeling demonstration projects for different building types—

(A) to ensure the sufficiency of the current Commercial Buildings Energy Consumption Survey and other data to serve as the basis for new measurement protocols for the achieved performance component of the building energy performance labeling program;

(B) to inform the development of measurement protocols for building types not currently covered by the Commercial Buildings Energy Consumption Survey; and

(C) to identify any additional information that needs to be developed to ensure effective use of the model label.

(2) PARTICIPATION.—Such demonstration projects shall include participation of—

(A) buildings from diverse geographical and climate regions;

(B) buildings in both urban and rural areas;

(C) single-family residential buildings;

(D) multihousing residential buildings with more than 50 units, including at least one project that provides affordable housing to individuals of diverse incomes;

(E) single-occupant commercial buildings larger than 30,000 square feet;

(F) multitenanted commercial buildings larger than 50,000 square feet; and

(G) buildings from both the public and private sectors.

(3) PRIORITY.—Priority in the selection of demonstration projects shall be given to projects that facilitate large-scale implementation of the labeling program for samples of buildings across neighborhoods, geographic regions, cities, or States.

(4) FINDINGS.—The Administrator shall report any findings from demonstration projects under this subsection, including an identification of any areas of needed data improvement, to the Department of

Energy's Energy Information Administration and Building Technologies Program.

(5) COORDINATION.—The Administrator and the Secretary of Energy shall coordinate demonstration projects undertaken pursuant to this subsection with those undertaken as part of the Zero-Net-Energy Commercial Buildings Initiative adopted under section 422 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17082).

(h) IMPLEMENTATION OF LABELING PROGRAM.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary of Energy, shall work with all State Energy Offices established pursuant to part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) or other State authorities as necessary for the purpose of implementing the labeling program established under this section for commercial and residential buildings.

(2) OUTREACH TO LOCAL AUTHORITIES.—The Administrator shall, acting in consultation and coordination with the respective States, encourage use of the labeling program by counties and other localities to broaden access to information about building energy use, for example, through disclosure of building label contents in tax, title, and other records

those localities maintain. For this purpose, the Administrator shall develop an electronic version of the label and information that can be readily transmitted and read in widely-available computer programs but is protected from unauthorized manipulation.

(3) MEANS OF IMPLEMENTATION.—In adopting the model labeling program established under this section, a State shall seek to ensure that labeled information be made accessible to the public in a manner so that owners, lenders, tenants, occupants, or other relevant parties can utilize it. Such accessibility may be accomplished through—

(A) preparation, and public disclosure of the label through filing with tax and title records at the time of—

(i) a building audit conducted with support from Federal or State funds;

(ii) a building energy-efficiency retrofit conducted in response to such an audit;

(iii) a final inspection of major renovations or additions made to a building in accordance with a building permit issued by a local government entity;

(iv) a sale that is recorded for title and tax purposes consistent with paragraph (8);

(v) a new lien recorded on the property for more than a set percentage of the assessed value of the property, if that lien reflects public financial assistance for energy-related improvements to that building; or

(vi) a change in ownership or operation of the building for purposes of utility billing; or

(B) other appropriate means.

(4) STATE IMPLEMENTATION OF PROGRAM.—

(A) ELIGIBILITY.—A State may become eligible to utilize allowance value to implement this program by—

(i) adopting by statute or regulation a requirement that buildings be assessed and labeled, consistent with the labeling requirements of the program established under this section; or

(ii) adopting a plan to implement a model labeling program consistent with this section within one year of enactment

of this Act, including the establishment of that program within 3 years after the date of enactment of this Act, and demonstrating continuous progress under that plan.

(B) USE OF ALLOWANCES.—Direct Federal support for the program established in this section is provided through the emission allowances allocated to the States' SEED Accounts pursuant to section 132 of this Act. To the extent that a State provides allowances to local governments within the State to implement this program, that shall be deemed a distribution of such allowances to units of local government pursuant to subsection (c)(1) of that section.

(5) GUIDANCE.—The Administrator may create or identify model programs and resources to provide guidance to offer to States and localities for creating labeling programs consistent with the model program established under this section.

(6) PROGRESS REPORT.—The Administrator, in consultation with the Secretary of Energy, shall provide a progress report to Congress not later than 3 years after the date of enactment of this Act that—

(A) evaluates the effectiveness of efforts to advance use of the model labeling program by States and localities;

(B) recommends any legislative changes necessary to broaden the use of the model labeling program; and

(C) identifies any changes to broaden the use of the model labeling program that the Administrator has made or intends to make that do not require additional legislative authority.

(7) STATE INFORMATION.—The Administrator may require States to report to the Administrator information that the Administrator requires to provide the report required under paragraph (6).

(8) PREVENTION OF DISRUPTION OF SALES TRANSACTIONS.—No State shall implement a new labeling program pursuant to this section in a manner that requires the labeling of a building to occur after a contract has been executed for the sale of that building and before the sales transaction is completed.

(i) IMPLEMENTATION OF LABELING PROGRAM IN FEDERAL BUILDINGS.—

(1) USE OF LABELING PROGRAM.—The Secretary of Energy and the Administrator shall use the

labeling program established under this section to evaluate energy performance in the facilities of the Department of Energy and the Environmental Protection Agency, respectively, to the extent practicable, and shall encourage and support implementation efforts in other Federal agencies.

(2) ANNUAL PROGRESS REPORT.—The Secretary of Energy and Administrator shall provide an annual progress report to Congress and the Office of Management and Budget detailing efforts to implement this subsection, as well as any best practices or needed resources identified as a result of such efforts.

(j) PUBLIC OUTREACH.—The Secretary of Energy and the Administrator, in consultation with nonprofit and industry stakeholders with specialized expertise, and in conjunction with other energy efficiency public awareness efforts, shall establish a business and consumer education program to increase awareness about the importance of building energy efficiency and to facilitate widespread use of the labeling program established under this section.

(k) DEFINITIONS.—In this section:

(1) BUILDING TYPE.—The term ''building type'' means a grouping of buildings as identified by their principal building activities, or as grouped by

their use, including office buildings, laboratories, libraries, data centers, retail establishments, hotels, warehouses, and educational buildings.

(2) MEASUREMENT PROTOCOL.—The term ''measurement protocol'' means the methodology, prescribed by the Administrator, for defining a benchmark for building energy performance for a specific building type and for measuring that performance against the benchmark.

(3) ACHIEVED PERFORMANCE.—The term ''achieved performance'' means the actual energy consumption of a building as compared to a baseline building of the same type and size, determined by actual consumption data normalized for appropriate variables.

(4) DESIGNED PERFORMANCE.—The term ''designed performance'' means the energy consumption performance a building would achieve if operated consistent with its design intent for building energy use, utilizing a standardized set of operational conditions informed by data collected or confirmed during an energy audit.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Administrator $50,000,000 for implementation of this section for each fiscal year from 2010 through 2020; and

(2) to the Secretary of Energy $20,000,000 for implementation of this section for fiscal year 2010 and $10,000,000 for fiscal years 2011 through 2020.

SEC. 205. TREE PLANTING PROGRAMS.

(a) FINDINGS.—The Congress finds that—

(1) the utility sector is the largest single source of greenhouse gas emissions in the United States today, producing approximately one-third of the country's emissions;

(2) heating and cooling homes accounts for nearly 60 percent of residential electricity usage in the United States;

(3) shade trees planted in strategic locations can reduce residential cooling costs by as much as 30 percent;

(4) shade trees have significant clean-air benefits associated with them;

(5) every 100 healthy large trees removes about 300 pounds of air pollution (including particulate matter and ozone) and about 15 tons of carbon dioxide from the air each year;

(6) tree cover on private property and on newly-developed land has declined since the 1970s, even while emissions from transportation and industry have been rising; and

(7) in over a dozen test cities across the United States, increasing urban tree cover has generated between two and five dollars in savings for every dollar invested in such tree planting.

(b) DEFINITIONS.—As used in this section:

(1) The term ''Secretary'' refers to the Secretary of Energy.

(2) The term ''retail power provider'' means any entity authorized under applicable State or Federal law to generate, distribute, or provide retail electricity, natural gas, or fuel oil service.

(3) The term ''tree-planting organization'' means any nonprofit or not-for-profit group which exists, in whole or in part, to—

(A) expand urban and residential tree cover;

(B) distribute trees for planting;

(C) increase awareness of the environmental and energy-related benefits of trees;

(D) educate the public about proper tree planting, care, and maintenance strategies; or

(E) carry out any combination of the foregoing activities.

(4) The term ''tree-siting guidelines'' means a comprehensive list of science-based measurements outlining the species and minimum distance required between trees planted pursuant to this section, in addition to the minimum required distance to be maintained between such trees and—

(A) building foundations;

(B) air conditioning units;

(C) driveways and walkways;

(D) property fences;

(E) preexisting utility infrastructure;

(F) septic systems;

(G) swimming pools; and

(H) other infrastructure as deemed appropriate.

(5) The terms ''small office'', ''small office buildings'', and ''small office settings'' means nonresidential buildings or structures zoned for business purposes that are 20,000 square feet or less in total area.

(c) PURPOSES.—The purpose of this section is to establish a grant program to assist retail power providers with the establishment and operation of targeted tree-

planting programs in residential and small office settings, for the following purposes:

(1) Reducing the peak-load demand for electricity from residences and small office buildings during the summer months through direct shading of buildings provided by strategically planted trees.

(2) Reducing wintertime demand for energy from residences and small office buildings by blocking cold winds from reaching such structures, which lowers interior temperatures and drives heating demand.

(3) Protecting public health by removing harmful pollution from the air.

(4) Utilizing the natural photosynthetic and transpiration process of trees to lower ambient temperatures and absorb carbon dioxide, thus mitigating the effects of climate change.

(5) Lowering electric bills for residential and small office ratepayers by limiting electricity consumption without reducing benefits.

(6) Relieving financial and demand pressure on retail power providers that stems from large peak-load energy demand.

(7) Protecting water quality and public health by reducing stormwater runoff and keeping harmful pollutants from entering waterways.

(8) Ensuring that trees are planted in locations that limit the amount of public money needed to maintain public and electric infrastructure.

(d) GENERAL AUTHORITY.—

(1) ASSISTANCE.—The Secretary is authorized to provide financial, technical, and related assistance to retail power providers to assist with the establishment of new, or continued operation of existing, targeted tree-planting programs for residences and small office buildings.

(2) PUBLIC RECOGNITION INITIATIVE.—In carrying out the authority provided under this section, the Secretary shall also create a national public recognition initiative to encourage participation in tree-planting programs by retail power providers.

(3) ELIGIBILITY.—Only those programs which utilize targeted, strategic tree-siting guidelines to plant trees in relation to building location, sunlight, and prevailing wind direction shall be eligible for assistance under this section.

(4) REQUIREMENTS.—In order to qualify for assistance under this section, a tree-planting program shall meet each of the following requirements:

(A) The program shall provide free or discounted shade-providing or wind-reducing trees to residential and small office consumers interested in lowering their home energy costs.

(B) The program shall optimize the electricity-consumption reduction benefit of each tree by planting in strategic locations around a given residence or small office.

(C) The program shall either—

(i) provide maximum amounts of shade during summer intervals when residences and small offices are exposed to the most sun intensity; or

(ii) provide maximum amounts of wind protection during fall and winter intervals when residences and small offices are exposed to the most wind intensity.

(D) The program shall use the best available science to create tree siting guidelines which dictate where the optimum tree species are best planted in locations that achieve maximum reductions in consumer energy demand

while causing the least disruption to public infrastructure, considering overhead and underground facilities.

(E) The program shall receive certification from the Secretary that it is designed to achieve the goals set forth in subparagraphs (A) through (D). In designating criteria for such certification, the Secretary shall collaborate with the United States Forest Service's Urban and Community Forestry Program to ensure that certification requirements are consistent with such above goals.

(5) NEW PROGRAM FUNDING SHARE.—The Secretary shall ensure that no less than 30 percent of the funds made available under this section are distributed to retail power providers which—

(A) have not previously established or operated qualified tree-planting programs; or

(B) are operating qualified tree-planting programs which were established no more than three years prior to the date of enactment of this section.

(e) AGREEMENTS BETWEEN ELECTRICITY PROVIDERS AND TREE-PLANTING ORGANIZATIONS.—

(1) GRANT AUTHORIZATION.—In providing assistance under this section, the Secretary is authorized to award grants only to retail power providers that have entered into binding legal agreements with nonprofit tree-planting organizations.

(2) CONDITIONS OF AGREEMENT.—Those agreements between retail power providers and tree-planting organizations shall set forth conditions under which nonprofit tree-planting organizations shall provide targeted tree-planting programs which may require these organizations to—

(A) participate in local technical advisory committees responsible for drafting general tree-siting guidelines and choosing the most effective species of trees to plant in given locations;

(B) coordinate volunteer recruitment to assist with the physical act of planting trees in residential locations;

(C) undertake public awareness campaigns to educate local residents about the benefits, cost savings, and availability of free shade trees;

(D) establish education and information campaigns to encourage recipients to maintain their shade trees over the long term;

(E) serve as the point of contact for existing and potential residential participants who have questions or concerns regarding the tree-planting program;

(F) require tree recipients to sign agreements committing to voluntary stewardship and care of provided trees;

(G) monitor and report on the survival, growth, overall health, and estimated energy savings of provided trees up until the end of their establishment period which shall be no less than five years; and

(H) ensure that trees planted near existing power lines will not interfere with energized electricity distribution lines when mature, and that no new trees will be planted under or adjacent to high-voltage electric transmission lines without prior consultation with the applicable retail power provider receiving assistance under this section.

(3) LACK OF NONPROFIT ORGANIZATION.—If qualified nonprofit or not-for-profit tree planting or-

ganizations do not exist or operate within areas served by retail power providers applying for assistance under this section, the requirements of this section shall apply to binding legal agreements entered into by such retail power providers and one of the following entities:

(A) Local municipal governments with jurisdiction over the urban or suburban forest.

(B) The State Forester for the State in which the tree planting program will operate.

(C) The United States Forest Service's Urban and Community Forestry representative for the State in which the tree-planting program will operate.

(D) A landscaping services company that is—

(i) identified in consultation with a national or State nonprofit or not-for-profit tree-planting organization;

(ii) licensed to operate in the State in which the tree-planting program will operate; and

(iii) a business as defined by the United States Census Bureau's 2007

North American Industry Classification System Code 561730.

(f) TECHNICAL ADVISORY COMMITTEES.—

(1) DESCRIPTION.—In order to qualify for assistance under this section, the retail power provider shall establish and consult with a local technical advisory committee which shall provide advice and consultation to the program, and may—

(A) design and adopt an approved plant list that emphasizes the use of hardy, noninvasive tree species and, where geographically appropriate, the use of native, or site-adapted, or low water-use shade trees;

(B) design and adopt planting, installation, and maintenance specifications and create a process for inspection and quality control;

(C) ensure that tree recipients are educated to care for and maintain their trees over the long term;

(D) help the public become more engaged and educated in the planting and care of shade trees;

(E) prioritize which sites receive trees, giving preference to locations with the most potential for energy conservation and secondary pref-

erence to areas where the average annual income is below the regional median; and

(F) assist with monitoring and collection of data on tree health, tree survival, and energy conservation benefits generated under this section.

(2) COMPENSATION.—Individuals serving on local technical advisory committees shall not receive compensation for their service.

(3) COMPOSITION.—Local technical advisory committees shall be composed of representatives from public, private, and nongovernmental agencies with expertise in demand-side energy efficiency management, urban forestry, or arboriculture, and shall be composed of the following:

(A) Up to 4 persons, but no less than one person, representing the retail power provider receiving assistance under this section.

(B) Up to 4 persons, but no less than one person, representing the local tree-planting organization which will partner with the retail power provider to carry out this section.

(C) Up to 3 persons representing local nonprofit conservation or environmental organizations. Preference shall be given to those enti-

ties which are organized under section 501(c)(3) of the Internal Revenue Code of 1986, and which have demonstrated expertise engaging the public in energy conservation, energy efficiency, or green building practices or a combination thereof, such that no single organization is represented by more than one individual under this paragraph.

(D) Up to 2 persons representing a local affordable housing agency, affordable housing builder, or community development corporation.

(E) Up to 3, but no less than one, persons representing local city or county government for each municipality where a shade tree-planting program will take place; at least one of these representatives shall be the city or county forester, city or county arborist, or functional equivalent.

(F) Up to one person representing the local government agency responsible for management of roads, sewers, and infrastructure, including but not limited to public works departments, transportation agencies, or equivalents.

(G) Up to 3 persons representing the nursery and landscaping industry.

(H) Up to 3 persons representing the research community or academia with expertise in natural resources or energy management issues.

(4) CHAIRPERSON.—Each local technical advisory committee shall elect a chairperson to preside over Committee meetings, act as a liaison to governmental and other outside entities, and direct the general operation of the committee; only committee representatives from paragraph (3)(A) or paragraph (3)(B) of this subsection shall be eligible to act as local technical advisory committee chairpersons.

(5) CREDENTIALS.—At least one of the members of each local technical advisory committee shall be certified with one or more of the following credentials: International Society of Arboriculture; Certified Arborist, ISA; Certified Arborist Municipal Specialist, ISA; Certified Arborist Utility Specialist, ISA; Board Certified Master Arborist; or Registered Landscape Architect recommended by the American Society of Landscape Architects.

(g) COST-SHARE PROGRAM.—

(1) FEDERAL SHARE.—The Federal share of support for projects funded under this section shall

not exceed 50 percent of the cost of such project and shall be provided on a matching basis.

(2) NON-FEDERAL SHARE.—The non-Federal share of such costs may be paid or contributed by any governmental or nongovernmental entity other than from funds derived directly or indirectly from an agency or instrumentality of the United States.

(h) RULEMAKING.—

(1) RULEMAKING PERIOD.—The Secretary shall be authorized to solicit comments and initiate a rulemaking period that shall last no more than 6 months after the date of enactment of this section.

(2) COMPETITIVE GRANT RULE.—At the conclusion of the rulemaking period under paragraph (1), the Secretary shall promulgate a rule governing a public, competitive grants process through which retail power providers may apply for Federal support under this section.

(i) NONDUPLICITY.—Nothing in this section shall be construed to supersede, duplicate, cancel, or negate the programs or authorities provided under section 9 of the Cooperative Forestry Assistance Act of 1978 (92 Stat. 369; Public Law 95–313; 16 U.S.C. 2105).

(j) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary for the implementation of this section.

SEC. 206. ENERGY EFFICIENCY FOR DATA CENTER BUILDINGS.

Section 453(c)(1) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17112(c)(1)) is amended by inserting ''but not later than 2 years after the date of enactment of this Act'' after ''described in subsection (b)''.

Subtitle B—Lighting and Appliance Energy Efficiency Programs

SEC. 211. LIGHTING EFFICIENCY STANDARDS.

(a) OUTDOOR LIGHTING.—

(1) DEFINITIONS.—

(A) Section 340(1) of the Energy Policy and Conservation Act (42 U.S.C. 6311(1)) is amended by striking subparagraph (L) and inserting the following:

''(L) Outdoor luminaires.

''(M) Outdoor high light output lamps.

''(N) Any other type of industrial equipment which the Secretary classifies as covered equipment under section 341(b).''.

(B) Section 340 of the Energy Policy and Conservation Act (42 U.S.C. 6311) is amended as adding at the end the following:

"(25) The term 'luminaire' means a complete lighting unit consisting of one or more light sources and ballast(s), together with parts designed to distribute the light, to position and protect such lamps, and to connect such light sources to the power supply.

"(26) The term 'outdoor luminaire' means a luminaire that is listed as suitable for wet locations pursuant to Underwriters Laboratories Inc. standard UL 1598 and is labeled as 'Suitable for Wet Locations' consistent with section 410.4(A) of the National Electrical Code 2005, or is designed for roadway illumination and meets the requirements of Addendum A for IESNA TM-15-07: Backlight, Uplight, and Glare (BUG) Ratings, except for—

"(A) luminaires designed for outdoor video display images that cannot be used in general lighting applications;

"(B) portable luminaires designed for use at construction sites;

"(C) luminaires designed for continuous immersion in swimming pools and other water features;

"(D) seasonal luminaires incorporating solely individual lamps rated at 10 watts or less;

"(E) luminaires designed to be used in emergency conditions that incorporate a means of charging a battery and a device to switch the power supply to emergency lighting loads automatically upon failure of the normal power supply;

"(F) components used for repair of installed luminaries and that meet the requirements of section 342(h);

"(G) a luminaire utilizing an electrode-less fluorescent lamp as the light source;

"(H) decorative gas lighting systems;

"(I) luminaires designed explicitly for lighting for theatrical purposes, including performance, stage, film production, and video production;

"(J) luminaires designed as theme elements in theme/amusement parks and that can-

not be used in most general lighting applications;

"(K) luminaires designed explicitly for vehicular roadway tunnels designed to comply with ANSI/IESNA RP-22-05;

"(L) luminaires designed explicitly for hazardous locations meeting UL Standard 844;

"(M) searchlights;

"(N) luminaires that are designed to be recessed into a building, and that cannot be used in most general lighting applications;

"(O) a luminaire rated only for residential applications utilizing a light source or sources regulated under the amendments made by section 321 of the Energy Independence and Security Act of 2007 and with a light output no greater than 2,600 lumens;

"(P) a residential pole-mounted luminaire that is not rated for commercial use utilizing a light source or sources meeting the efficiency requirements of section 231 of the Energy Independence and Security Act of 2007 and mounted on a post or pole not taller than 10.5 feet above ground and with a light output not greater than 2,600 lumens;

"(Q) a residential fixture with E12 (Candelabra) bases that is rated for not more than 300 watts total; or

"(R) a residential fixture with medium screw bases that is rated for not more than 145 watts.

"(27) The term 'outdoor high light outputlamp' means a lamp that—

"(A) has a rated lumen output not less than 2601 lumens;

"(B) is capable of being operated at a voltage not less than 110 volts and not greater than 300 volts, or driven at a constant current of 6.6 amperes;

"(C) is not a Parabolic Aluminized Reflector lamp; and

"(D) is not a J-type double-ended (T-3) halogen quartz lamp, utilizing R-7S bases, that is manufactured before January 1, 2015.

"(28) The term 'outdoor lighting control' means a device incorporated in a luminaire that receives a signal, from either a sensor (such as an occupancy sensor, motion sensor, or daylight sensor) or an input signal (including analog or digital signals communicated through wired or wireless technology),

and can adjust the light level according to the signal.''.

(2) STANDARDS.— Section 342 of the Energy Policy and Conservation Act (42 U.S.C. 6313) is amended by adding at the end the following:

''(g) OUTDOOR LUMINAIRES.—

''(1) Each outdoor luminaire manufactured on or after January 1, 2011, shall—

''(A) have an initial luminaire efficacy of at least 50 lumens per watt; and

''(B) be designed to use a light source with a lumen maintenance, calculated as mean rated lumens divided by initial lumens, of at least 0.6.

''(2) Each outdoor luminaire manufactured on or after January 1, 2013, shall—

''(A) have an initial luminaire efficacy of at least 70 lumens per watt; and

''(B) be designed to use a light source with a lumen maintenance, calculated as mean rated lumens divided by initial lumens, of at least 0.6.

''(3) Each outdoor luminaire manufactured on or after January 1, 2015, shall—

''(A) have an initial luminaire efficacy of at least 80 lumens per watt; and

"(B) be designed to use a light source with a lumen maintenance, calculated as mean rated lumens divided by initial lumens, of at least 0.65.

"(4) In addition to the requirements of paragraphs (1) through (3), each outdoor luminaire manufactured on or after January 1, 2011, shall have the capability of producing at least two different light levels, including 100 percent and 60 percent of full lamp output as tested with the maximum rated lamp per UL1598 or the manufacturer's maximum specified for the luminaire under test.

"(5)(A) Not later than January 1, 2017, the Secretary shall issue a final rule amending the applicable standards established in paragraphs (3) and (4) if technologically feasible and economically justified.

"(B) A final rule issued under subparagraph (A) shall establish efficiency standards at the maximum level that is technically feasible and economically justified, as provided in subsections (o) and (p) of section 325. The Secretary may also, in such rulemaking, amend or discontinue the product exclusions listed in section 340(26)(A) through (P), or amend the lumen maintenance requirements in paragraph

(3) if the Secretary determines that such amendments are consistent with the purposes of this Act.

"(C) If the Secretary issues a final rule under subparagraph (A) establishing amended standards, the final rule shall provide that the amended standards apply to products manufactured on or after January 1, 2020, or one year after the date on which the final amended standard is published, whichever is later.

"(h) OUTDOOR HIGH LIGHT OUTPUT LAMPS.—Each outdoor high light output lamp manufactured on or after January 1, 2012, shall have a lighting efficiency of at least 45 lumens per watt.".

(3) TEST PROCEDURES.— Section 343(a) of the Energy Policy and Conservation Act (42 U.S.C. 6314(a)) is amended by adding at the end the following:

"(10) OUTDOOR LIGHTING.—

"(A) With respect to outdoor luminaires and outdoor high light output lamps, the test procedures shall be based upon the test procedures specified in illuminating engineering society procedures LM–79 as of March 1, 2009, and LM-31, and/or other appropriate consensus test procedures developed by the Illuminating

1 Engineering Society or other appropriate con-
2 sensus standards bodies.
3 "(B) If illuminating engineering society
4 procedure LM—79 is amended, the Secretary
5 shall amend the test procedures established in
6 subparagraph (A) as necessary to be consistent
7 with the amended LM–79 test procedure, unless
8 the Secretary determines, by rule, published in
9 the Federal Register and supported by clear
10 and convincing evidence, that to do so would
11 not meet the requirements for test procedures
12 under paragraph (2).
13 "(C) The Secretary may revise the test
14 procedures for outdoor luminaires or outdoor
15 high light output lamps by rule consistent with
16 paragraph (2), and may incorporate as appro-
17 priate consensus test procedures developed by
18 the Illuminating Engineering Society or other
19 appropriate consensus standards bodies.".
20 (4) PREEMPTION.— Section 345 of the Energy
21 Policy and Conservation Act (42 U.S.C. 6316) is
22 amended by adding at the end the following:
23 "(i)(1) Except as provided in paragraph (2), section
24 327 shall apply to outdoor luminaires to the same extent

1 and in the same manner as the section applies under part
2 B.
3 "(2) Any State standard that is adopted on or before
4 January 1, 2015, pursuant to a statutory requirement to
5 adopt efficiency standards for reducing outdoor lighting
6 energy use enacted prior to January 31, 2008, shall not
7 be preempted.".
8 (5) ENERGY EFFICIENCY STANDARDS FOR CER-
9 TAIN LUMINAIRES.—Not later than 1 year after the
10 date of enactment of this Act, the Secretary of En-
11 ergy shall, in consultation with the National Elec-
12 trical Manufacturers Association, collect data for
13 United States sales of luminaires described in sec-
14 tion 340(26)(H) and (M) of the Energy Policy and
15 Conservation Act, to determine the historical growth
16 rate. If the Secretary finds that the growth in mar-
17 ket share of such luminaires exceeds twice the year
18 to year rate of the average of the previous three
19 years, then the Secretary shall within 12 months ini-
20 tiate a rulemaking to determine if such exclusion
21 should be eliminated, if substitute products exist
22 that perform more efficiently and fulfill the perform-
23 ance functions of these luminaires.
24 (b) PORTABLE LIGHTING.—
25 (1) PORTABLE LIGHT FIXTURES.—

(A) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended by adding at the end the following:

"(67) ART WORK LIGHT FIXTURE.—The term 'art work light fixture' means a light fixture designed only to be mounted directly to an art work and for the purpose of illuminating that art work.

"(68) LED LIGHT ENGINE.—The term 'LED light engine' or 'LED light engine with integral heat sink' means a subsystem of an LED light fixture that—

"(A) includes 1 or more LED components, including—

"(i) an LED driver power source with electrical and mechanical interfaces; and

"(ii) an integral heat sink to provide thermal dissipation; and

"(B) may be designed to accept additional components that provide aesthetic, optical, and environmental control.

"(69) LED LIGHT FIXTURE.—The term 'LED light fixture' means a complete lighting unit consisting of—

"(A) an LED light source with 1 or more LED lamps or LED light engines; and

"(B) parts—

"(i) to distribute the light;

"(ii) to position and protect the light source; and

"(iii) to connect the light source to electrical power.

"(70) LIGHT FIXTURE.—The term 'light fixture' means a product designed to provide light that includes—

"(A) at least 1 lamp socket; and

"(B) parts—

"(i) to distribute the light;

"(ii) position and protect 1 or more lamps; and

"(iii) to connect 1 or more lamps to a power supply.

"(71) PORTABLE LIGHT FIXTURE.—

"(A) IN GENERAL.—The term 'portable light fixture' means a light fixture that has a flexible cord and an attachment plug for connection to a nominal 120-volt circuit that—

"(i) allows the user to relocate the product without any rewiring; and

"(ii) typically can be controlled with a switch located on the product or the power cord of the product.

"(B) EXCLUSIONS.—The term 'portable light fixture' does not include—

"(i) direct plug-in night lights, sun or heat lamps, medical or dental lights, portable electric hand lamps, signs or commercial advertising displays, photographic lamps, germicidal lamps, or light fixtures for marine use or for use in hazardous locations (as those terms are defined in ANSI/NFPA 70 of the National Electrical Code); or

"(ii) decorative lighting strings, decorative lighting outfits, or electric candles or candelabra without lamp shades that are covered by Underwriter Laboratories (UL) standard 588, 'Seasonal and Holiday Decorative Products'.".

(B) COVERAGE.—

(i) IN GENERAL.—Section 322(a) of the Energy Policy and Conservation Act (42 U.S.C. 6292(a)) is amended—

(I) by redesignating paragraph (20) as paragraph (24); and

(II) by inserting after paragraph (19) the following:

''(20) Portable light fixtures.''.

(ii) CONFORMING AMENDMENTS.—Section 325(l) of the Energy Policy and Conservation Act (42 U.S.C. 6295(l)) is amended by striking ''paragraph (19)'' each place it appears in paragraphs (1) and (2) and inserting ''paragraph (24)''.

(C) TEST PROCEDURES.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)) is amended by adding at the end the following:

''(19) LED FIXTURES AND LED LIGHT ENGINES.—Test procedures for LED fixtures and LED light engines shall be based on Illuminating Engineering Society of North America (IESNA) test procedure LM–79, Approved Method for Electrical and Photometric Testing of Solid-State Lighting Devices, and IESNA-approved test procedure for testing LED light engines.''.

(D) STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended—

(i) by redesignating subsection (ii) as subsection (oo);

(ii) in subsection (oo)(2), as redesignated in clause (i) of this subparagraph, by striking ''(hh)'' each place it appears and inserting ''(mm)''; and

(iii) by inserting after subsection (hh) the following:

''(ii) PORTABLE LIGHT FIXTURES.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), portable light fixtures manufactured on or after January 1, 2012, shall meet 1 or more of the following requirements:

''(A) Be a fluorescent light fixture that meets the requirements of the Energy Star Program for Residential Light Fixtures, Version 4.2.

''(B) Be equipped with only 1 or more GU–24 line-voltage sockets, not be rated for use with incandescent lamps of any type (as defined in ANSI standards), and meet the re-

quirements of version 4.2 of the Energy Star program for residential light fixtures.

"(C) Be an LED light fixture or a light fixture with an LED light engine and comply with the following minimum requirements:

"(i) Minimum light output: 200 lumens (initial).

"(ii) Minimum LED light engine efficacy: 40 lumens/watt installed in fixtures that meet the minimum light fixture efficacy of 29 lumens/watt or, alternatively, a minimum LED light engine efficacy of 60 lumens/watt for fixtures that do not meet the minimum light fixture efficacy of 29 lumens/watt.

"(iii) All portable fixtures shall have a minimum LED light fixture efficacy of 29 lumens/watt and a minimum LED light engine efficacy of 60 lumens/watt by January 1, 2016.

"(iv) Color Correlated Temperature (CCT): 2700K through 4000K.

"(v) Minimum Color Rendering Index (CRI): 75.

"(vi) Power factor equal to or greater than 0.70.

"(vii) Portable luminaries that have internal power supplies shall have zero standby power when the luminaire is turned off.

"(viii) LED light sources shall deliver at least 70 percent of initial lumens for at least 25,000 hours.

"(D)(i) Be equipped with an ANSI-designated E12, E17, or E26 screw-based socket and be prepackaged and sold together with 1 screw-based compact fluorescent lamp or screw-based LED lamp for each screw-based socket on the portable light fixture.

"(ii) The compact fluorescent or LED lamps prepackaged with the light fixture shall be fully compatible with any light fixture controls incorporated into the light fixture (for example, light fixtures with dimmers shall be packed with dimmable lamps).

"(iii) Compact fluorescent lamps prepackaged with light fixtures shall meet the requirements of the Energy Star Program for CFLs Version 4.0.

"(iv) Screw-based LED lamps shall comply with the minimum requirements described in subparagraph (C).

"(E) Be equipped with 1 or more single-ended, non-screw based halogen lamp sockets (line or low voltage), a dimmer control or high-low control, and be rated for a maximum of 100 watts.

"(2) REVIEW.—

"(A) REVIEW.—The Secretary shall review the criteria and standards established under paragraph (1) to determine if revised standards are technologically feasible and economically justified.

"(B) COMPONENTS.—The review shall include consideration of—

"(i) whether a separate compliance procedure is still needed for halogen fixtures described in subparagraph (E) and, if necessary, what an appropriate standard for halogen fixtures shall be;

"(ii) whether the specific technical criteria described in subparagraphs (A), (C), and (D)(iii) should be modified; and

"(iii) which fixtures should be exempted from the light fixture efficacy standard as of January 1, 2016, because the fixtures are primarily decorative in nature (as defined by the Secretary) and, even if exempted, are likely to be sold in limited quantities.

"(C) TIMING.—

"(i) DETERMINATION.—Not later than January 1, 2014, the Secretary shall publish amended standards, or a determination that no amended standards are justified, under this subsection.

"(ii) STANDARDS.—Any standards under this paragraph shall take effect on January 1, 2016.

"(3) ART WORK LIGHT FIXTURES.—Art work light fixtures manufactured on or after January 1, 2012, shall—

"(A) comply with paragraph (1); or

"(B)(i) contain only ANSI-designated E12 screw-based line-voltage sockets;

"(ii) have not more than 3 sockets;

"(iii) be controlled with an integral high/low switch;

"(iv) be rated for not more than 25 watts if fitted with 1 socket; and

"(v) be rated for not more than 15 watts per socket if fitted with 2 or 3 sockets.

"(4) EXCEPTION FROM PREEMPTION.—Notwithstanding section 327, Federal preemption shall not apply to a regulation concerning portable light fixtures adopted by the California Energy Commission on or before January 1, 2014.".

(2) GU–24 BASE LAMPS.—

(A) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) (as amended by paragraph (1)(A)) is amended by adding at the end the following:

"(72) GU–24.—The term 'GU–24' means the designation of a lamp socket, based on a coding system by the International Electrotechnical Commission, under which—

"(A) 'G' indicates a holder and socket type with 2 or more projecting contacts, such as pins or posts;

"(B) 'U' distinguishes between lamp and holder designs of similar type that are not interchangeable due to electrical or mechanical requirements; and

"(C) 24 indicates the distance in millimeters between the electrical contact posts.

"(73) GU-24 ADAPTOR.—

"(A) IN GENERAL.—The term 'GU-24 Adaptor' means a 1-piece device, pig-tail, wiring harness, or other such socket or base attachment that—

"(i) connects to a GU-24 socket on 1 end and provides a different type of socket or connection on the other end; and

"(ii) does not alter the voltage.

"(B) EXCLUSION.—The term 'GU-24 Adaptor' does not include a fluorescent ballast with a GU–24 base.

"(74) GU–24 BASE LAMP.—'GU–24 base lamp' means a light bulb designed to fit in a GU–24 socket.".

(B) STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) (as amended by paragraph (1)(D)) is amended by inserting after subsection (ii) the following:

"(jj) GU–24 BASE LAMPS.—

"(1) IN GENERAL.—A GU–24 base lamp shall not be an incandescent lamp as defined by ANSI.

1 "(2) GU-24 ADAPTORS.—GU–24 adaptors shall
2 not adapt a GU–24 socket to any other line voltage
3 socket.".

4 (3) STANDARDS FOR CERTAIN INCANDESCENT
5 REFLECTOR LAMPS.—Section 325(i) of the Energy
6 Policy and Conservation Act (42 U.S.C. 6295(i)), as
7 amended by section 161(a)(12) of this Act, is
8 amended by adding at the end the following:

9 "(9) CERTAIN INCANDESCENT REFLECTOR
10 LAMPS.—(A) No later than 12 months after enact-
11 ment of this paragraph, the Secretary shall publish
12 a final rule establishing standards for incandescent
13 reflector lamp types described in paragraph (1)(D).
14 Such standards shall be effective on July 1, 2013.

15 "(B) Any rulemaking for incandescent reflector
16 lamps completed after enactment of this section
17 shall consider standards for all incandescent reflec-
18 tor lamps, inclusive of those specified in paragraph
19 (1)(C).

20 "(10) REFLECTOR LAMPS.—No later than Jan-
21 uary 1, 2015, the Secretary shall publish a final rule
22 establishing and amending standards for reflector
23 lamps, including incandescent reflector lamps. Such
24 standards shall be effective no sooner than three
25 years after publication of the final rule. Such rule-

making shall consider incandescent and non-incandescent technologies. Such rulemaking shall consider a new metric other than lumens-per-watt based on the photometric distribution of light from such lamps.''.

SEC. 212. OTHER APPLIANCE EFFICIENCY STANDARDS.

(a) STANDARDS FOR WATER DISPENSERS, HOT FOOD HOLDING CABINETS, AND PORTABLE ELECTRIC SPAS.—

(1) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291), as amended by section 211 of this Act, is further amended by adding at the end the following:

''(75) The term 'water dispenser' means a factory-made assembly that mechanically cools and heats potable water and that dispenses the cooled or heated water by integral or remote means.

''(76) The term 'bottle-type water dispenser' means a drinking water dispenser designed for dispensing both hot and cold water that uses a removable bottle or container as the source of potable water.

''(77) The term 'commercial hot food holding cabinet' means a heated, fully-enclosed compartment with one or more solid or glass doors that is de-

signed to maintain the temperature of hot food that has been cooked in a separate appliance. Such term does not include heated glass merchandizing cabinets, drawer warmers, commercial hot food holding cabinets with interior volumes of less than 8 cubic feet, or cook-and-hold appliances.

''(78) The term 'portable electric spa' means a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water.''.

(2) COVERAGE.—Section 322(a) of the Energy Policy and Conservation Act (42 U.S.C. 6292(a)), as amended by section 211(b)(1)(B) of this Act, is further amended by inserting after paragraph (20) the following new paragraphs:

''(21) Bottle type water dispensers.

''(22) Commercial hot food holding cabinets.

''(23) Portable electric spas.''.

(3) TEST PROCEDURES.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)), as amended by section 211(b)(1)(C) of this Act, is further amended by adding at the end the following:

''(20) BOTTLE TYPE WATER DISPENSERS.—Test procedures for bottle type water dispensers shall be based on 'Energy Star Program Require-

ments for Bottled Water Coolers version 1.1' published by the Environmental Protection Agency. Units with an integral, automatic timer shall not be tested using section 4D, 'Timer Usage,' of the test criteria.

"(21) COMMERCIAL HOT FOOD HOLDING CABINETS.—Test procedures for commercial hot food holding cabinets shall be based on the test procedures described in ANSI/ASTM F2140–01 (Test for idle energy rate-dry test). Interior volume shall be based on the method shown in the Environmental Protection Agency's 'Energy Star Program Requirements for Commercial Hot Food Holding Cabinets' as in effect on August 15, 2003.

"(22) PORTABLE ELECTRIC SPAS.—Test procedures for portable electric spas shall be based on the test method for portable electric spas contained in section 1604, title 20, California Code of Regulations as amended on December 3, 2008. When the American National Standards Institute publishes a test procedure for portable electric spas, the Secretary shall revise the Department of Energy's procedure.".

(4) STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295), as

amended by section 211 of this Act, is further amended by adding after subsection (jj) the following:

"(kk) BOTTLE TYPE WATER DISPENSERS.—Effective January 1, 2012, bottle-type water dispensers designed for dispensing both hot and cold water shall not have standby energy consumption greater than 1.2 kilowatt-hours per day.

"(ll) COMMERCIAL HOT FOOD HOLDING CABINETS.—Effective January 1, 2012, commercial hot food holding cabinets with interior volumes of 8 cubic feet or greater shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume.

"(mm) PORTABLE ELECTRIC SPAS.—Effective January 1, 2012, portable electric spas shall not have a normalized standby power greater than $5(V^{2/3})$ Watts where V=the fill volume in gallons.

"(nn) REVISIONS.—The Secretary of Energy shall consider revisions to the standards in subsections (kk), (ll), and (mm) in accordance with subsection (o) and publish a final rule no later than January 1, 2013 establishing such revised standards, or make a finding that no revisions are technically feasible and economically justified. Any such revised standards shall take effect January 1, 2016.".

(b) COMMERCIAL FURNACE EFFICIENCY STANDARDS.—Section 342(a) of the Energy Policy and Conservation Act (42 U.S.C. 6312(a)) is amended by inserting after paragraph (10) the following new paragraph:

"(11) WARM AIR FURNACES.—Each warm air furnace with an input rating of 225,000 Btu per hour or more and manufactured after January 1, 2011, shall meet the following standard levels:

"(A) GAS-FIRED UNITS.—

"(i) Minimum thermal efficiency of 80 percent.

"(ii) Include an interrupted or intermittent ignition device.

"(iii) Have jacket losses not exceeding 0.75 percent of the input rating.

"(iv) Have either power venting or a flue damper.

"(B) OIL-FIRED UNITS.—

"(i) Minimum thermal efficiency of 81 percent.

"(ii) Have jacket losses not exceeding 0.75 percent of the input rating.

"(iii) Have either power venting or a flue damper.".

SEC. 213. APPLIANCE EFFICIENCY DETERMINATIONS AND PROCEDURES.

(a) DEFINITION OF ENERGY CONSERVATION STANDARD.—Section 321(6) of the Energy Policy and Conservation Act (42 U.S.C. 6291(6)) is amended to read as follows:

"(6) ENERGY CONSERVATION STANDARD.—

"(A) IN GENERAL.—The term 'energy conservation standard' means 1 or more performance standards that—

"(i) for covered products (excluding clothes washers, dishwashers, showerheads, faucets, water closets, and urinals), prescribe a minimum level of energy efficiency or a maximum quantity of energy use, determined in accordance with test procedures prescribed under section 323;

"(ii) for showerheads, faucets, water closets, and urinals, prescribe a minimum level of water efficiency or a maximum quantity of water use, determined in accordance with test procedures prescribed under section 323; and

"(iii) for clothes washers and dishwashers—

"(I) prescribe a minimum level of energy efficiency or a maximum quantity of energy use, determined in accordance with test procedures prescribed under section 323; and

"(II) may include a minimum level of water efficiency or a maximum quantity of water use, determined in accordance with those test procedures.

"(B) INCLUSIONS.—The term 'energy conservation standard' includes—

"(i) 1 or more design requirements, if the requirements were established—

"(I) on or before the date of enactment of this subclause;

"(II) as part of a direct final rule under section 325(p)(4); or

"(III) as part of a final rule published on or after January 1, 2012, and

"(ii) any other requirements that the Secretary may prescribe under section 325(r).

"(C) EXCLUSION.—The term 'energy conservation standard' does not include a perform-

ance standard for a component of a finished covered product, unless regulation of the component is specifically authorized or established pursuant to this title.''.

(b) ADOPTING CONSENSUS TEST PROCEDURES AND TEST PROCEDURES IN USE ELSEWHERE.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)), as amended by sections 211 and 212 of this Act, is further amended by adding the following new paragraph after paragraph (22):

''(23) CONSENSUS AND ALTERNATE TEST PROCEDURES.—

''(A) RECEIPT OF JOINT RECOMMENDATION OR ALTERNATE TESTING PROCEDURE.—On receipt of—

''(i) a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, and contains recommendations with respect to the testing procedure for a covered product; or

"(ii) a submission of a testing procedure currently in use for a covered product by a State, nation, or group of nations—

"(I) if the Secretary determines that the recommended testing procedure contained in the statement or submission is in accordance with subsection (b)(3), the Secretary may issue a final rule that establishes an energy or water conservation testing procedure that is published simultaneously with a notice of proposed rulemaking that proposes a new or amended energy or water conservation testing procedure that is identical to the testing procedure established in the final rule to establish the recommended testing procedure (referred to in this paragraph as a 'direct final rule'); or

"(II) if the Secretary determines that a direct final rule cannot be issued based on the statement or submission, the Secretary shall publish a notice of the determination, together

with an explanation of the reasons for the determination.

"(B) PUBLIC COMMENT.—The Secretary shall solicit public comment for a period of at least 110 days with respect to each direct final rule issued by the Secretary under subparagraph (A)(ii)(I).

"(C) WITHDRAWAL OF DIRECT FINAL RULES.—

"(i) IN GENERAL.—Not later than 120 days after the date on which a direct final rule issued under subparagraph (A)(ii)(I) is published in the Federal Register, the Secretary shall withdraw the direct final rule if—

"(I) the Secretary receives 1 or more adverse public comments relating to the direct final rule under subparagraph (B)or any alternative joint recommendation; and

"(II) based on the rulemaking record relating to the direct final rule, the Secretary determines that such adverse public comments or alternative joint recommendation may pro-

vide a reasonable basis for withdrawing the direct final rule under paragraph (3) or any other applicable law.

"(ii) ACTION ON WITHDRAWAL.—On withdrawal of a direct final rule under clause (i), the Secretary shall—

"(I) proceed with the notice of proposed rulemaking published simultaneously with the direct final rule as described in subparagraph (A)(ii)(I); and

"(II) publish in the Federal Register the reasons why the direct final rule was withdrawn.

"(iii) TREATMENT OF WITHDRAWN DIRECT FINAL RULES.—A direct final rule that is withdrawn under clause (i) shall not be considered to be a final rule for purposes of subsection (b).

"(D) EFFECT OF PARAGRAPH.—Nothing in this paragraph authorizes the Secretary to issue a direct final rule based solely on receipt of more than 1 statement containing rec-

ommended test procedures relating to the direct final rule.''.

(c) UPDATING TELEVISION TEST METHODS.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)), as amended by sections 211 and 212 of this Act, and subsection (b) of this section, is further amended by adding at the end the following new paragraph:

''(24) TELEVISIONS.—(A) On the date of enactment of this paragraph, Appendix H to Subpart B of Part 430 of the United States Code of Federal Regulations, 'Uniform Test Method for Measuring the Energy Consumption of Television Sets', is repealed.

''(B) No later than 12 months after the date of enactment of this paragraph the Secretary shall publish in the Federal Register a final rule prescribing a new test method for televisions.''.

(d) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i)) is amended as follows:

(A) By striking ''and'' at the end of subclause (VI).

(B) By redesignating subclause (VII) as subclause (XI).

(C) By inserting the following new subclauses after subclause (VI):

''(VII) the estimated value of the carbon dioxide and other emission reductions that will be achieved by virtue of the higher energy efficiency of the covered products resulting from the imposition of the standard;

''(VIII) the estimated impact of standards for a particular product on average consumer energy prices;

''(IX) the increased energy efficiency that may be attributable to the installation of Smart Grid technologies or capabilities in the covered products, if applicable in the determination of the Secretary;

''(X) the availability in the United States or in other nations of examples or prototypes of covered products that achieve significantly higher efficiency standards for energy or for water; and''.

(2) Section 325(o)(2)(B)(iii) of such Act is amended as follows:

(A) By striking ''three'' and inserting ''5''.

(B) By inserting after the first sentence the following ''For products with an average expected use-

ful life of less than 5 years, such rebuttable presumption shall be determined utilizing 75 percent of the product's average expected useful life as a multiplier instead of 5.''.

(C) By striking the last sentence and inserting the following: ''Such a presumption may be rebutted only if the Secretary finds, based on clear, convincing, and reliable evidence, that—

''(I) such standard level would cause serious and unavoidable hardship to the average consumer of the product, or to manufacturers supplying a significant portion of the market for the product, that substantially outweighs the standard level's benefits;

''(II) the standard and implementing regulations cannot be designed to avoid or mitigate the hardship identified under subclause (I), through the adoption of regional standards consistent with paragraph (6) of this subsection, or other reasonable means consistent with this part;

''(III) the same or substantially similar hardship would not occur under a standard adopted in the absence of the presumption, but that otherwise meets the requirements of this section; and

''(IV) the hardship cannot be avoided or mitigated pursuant the procedures specified in section

504 of the Department of Energy Organization Act (42 U.S.C. 7194).

A determination by the Secretary that the criteria triggering such presumption are not met, or that the criterion for rebutting the presumption are met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.''.

(e) OBTAINING APPLIANCE INFORMATION FROM MANUFACTURERS.—Section 326(d) of the Energy Policy and Conservation Act (42 U.S.C. 6295(d)) is amended to read as follows:

''(d) INFORMATION REQUIREMENTS.—(1) For purposes of carrying out this part, the Secretary shall publish proposed regulations not later than one year after the date of enactment of the American Clean Energy and Security Act of 2009, and after receiving public comment, final regulations not later than 18 months from such date of enactment under this part or other provision of law administered by the Secretary, which shall require each manufacturer of a covered product to submit information or reports to the Secretary on an annual basis in a form adopted by the Secretary. Such reports shall include information or data with respect to—

''(A) the manufacturers' compliance with all requirements applicable pursuant to this part;

"(B) the economic impact of any proposed energy conservation standard;

"(C) the manufacturers' annual shipments of each class or category of covered products, organized, to the maximum extent practicable, by—

"(i) energy efficiency, energy use, and, if applicable, water use;

"(ii) the presence or absence of such efficiency related or energy consuming operational characteristics or components as the Secretary determines are relevant for the purposes of carrying out this part; and

"(iii) the State or regional location of sale, for covered products for which the Secretary may adopt regional standards; and

"(D) such other categories of information as the Secretary deems relevant to carry out this part, including such other information as may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards and to insure compliance with the requirements of this part.

"(2) In adopting regulations under this subsection, the Secretary shall consider existing public sources of in-

formation, including nationally recognized certification programs of trade associations.

"(3) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

"(4) To the extent that they do not conflict with the duties of the Secretary in carrying out this part, the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796(d)) shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to other energy information obtained under such section.".

(f) STATE WAIVER.—Section 327(c) of the Energy Policy and Conservation Act (42 U.S.C. 6297(c)), as amended by section 161(a)(19) of this Act, is further amended by adding at the end the following:

"(12) is a regulation concerning standards for hot food holding cabinets, drinking water dispensers and portable electric spas adopted by the California Energy Commission on or before January 1, 2013.".

(g) WAIVER OF FEDERAL PREEMPTION.—Paragraph (1) of section 327(d) of the Energy Policy and Conservation Act (42 U.S.C. 6297(d)) is amended as follows:

(1) In subparagraph (A) by striking ''State regulation'' each place it appears and inserting ''State statute or regulation''.

(2) In subparagraph (B) by adding at the end the following new sentence: ''In making such a finding, the Secretary may not reject a petition for failure of the petitioning State or river basin commission to produce confidential information maintained by any manufacturer or distributor, or group or association of manufacturers or distributors, and which the petitioning party does not have the legal right to obtain.''.

(3) In clause (ii) of subparagraph (C) by striking ''costs'' each place it appears and inserting ''estimated costs''.

(4) In subparagraph (C) by striking ''within the context of the State's energy plan and forecast, and,''.

(h) INCLUSION OF CARBON OUTPUT ON APPLIANCE ''ENERGYGUIDE'' LABELS.—(1) Section 324(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding the following at the end:

''(I)(i) Not later than 90 days after the date of enactment of this subparagraph, the Commission shall initiate

a rulemaking to implement the additional labeling requirements specified in subsection (c)(1)(C) of this section with an effective date for the revised labeling requirement not later than 12 months from issuance of the final rule.

''(ii) Not later than 24 months after the date of enactment of this subparagraph, the Commission shall complete the rulemaking initiated under clause (i).

''(iii) Not later than 90 days after issuance of the final rule as provided in this subparagraph, the Secretary shall issue calculation methods required to effectuate the labeling requirements specified in subsection (c)(1)(C) of this section.''.

(2) Section 324(c)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6294(c)(1)) is amended—

(A) by striking ''and'' at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(C) for products or groups of products providing a comparable function (including the group of products comprising the heating function of heat pumps and furnaces) among covered products listed in paragraphs (3), (4), (5), (8), (9), (10), and (11)

of section 322(a) of this part, and others designated by the Secretary, the estimated total annual atmospheric carbon dioxide emissions (or their equivalent in other greenhouse gases) associated with, or caused by, the product, calculated utilizing—

"(i) national average energy use for the product including energy consumed at the point of end use based on test procedures developed under section 323 of this part;

"(ii) national average energy consumed or lost in the production, generation, transportation, storage, and distribution of energy to the point of end use; and

"(iii) any direct emissions of greenhouse gases from the product during normal use;

"(D) in determining the national average energy consumption and total annual atmospheric carbon dioxide emissions, the Secretary shall utilize Federal Government sources, including the Energy Information Administration Annual Energy Review, the Environmental Protection Agency eGRID data base, Environmental Protection Agency AP–42 Emission Factors as amended, and other sources determined to be appropriate by the Secretary; and

"(E) information presenting, for each product (or group of products providing the comparable function) identified in section (c)(1)(C) of this section, the estimated annual carbon dioxide emissions calculated within the range of emissions calculated for all models of the product or group according to its function, including those models consuming fuels and those models not consuming fuels.".

(i) PERMITTING STATES TO SEEK INJUNCTIVE ENFORCEMENT.—(1) Section 334 of the Energy Policy and Conservation Act (42 U.S.C. 6304) is amended to read as follows:

"SEC. 334. JURISDICTION AND VENUE.

"(a) JURISDICTION.—The United States district courts shall have jurisdiction to restrain—

"(1) any violation of section 332; and

"(2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 324 or 325.

"(b) AUTHORITY.—Any action referred to in subsection (a) shall be brought by the Commission or by the attorney general of a State in the name of the State, except that—

"(1) any such action to restrain any violation of section 332(a)(3) which relates to requirements prescribed by the Secretary or any violation of section 332(a)(4) which relates to request of the Secretary under section 326(b)(2) shall be brought by the Secretary; and

"(2) any violation of section 332(a)(5) or 332(a)(7) shall be brought by the Secretary or by the attorney general of a State in the name of the State.

"(c) VENUE AND SERVICE OF PROCESS.—Any such action may be brought in the United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court of the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.".

(2) The item relating to section 334 in the table of contents for such Act is amended to read as follows:

"Sec. 334. Jurisdiction and venue.".

(j) TREATMENT OF APPLIANCES WITHIN BUILDING CODES.—(1) Section 327(f)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6297(f)(3)) is amended by striking subparagraphs (B) through (G) and inserting the following:

"(B) The code meets at least one of the following requirements:

"(i) The code does not require that the covered product have an energy efficiency exceeding—

"(I) the applicable energy conservation standard established in or prescribed under section 325;

"(II) the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section; or

"(III) the required level established in the International Energy Conservation Code or in a standard of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, or by the Secretary pursuant to section 304 of the Energy Conservation and Production Act.

"(ii) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under sec-

tion 325, the baseline building designs are based on an efficiency level for such covered product which meets but does not exceed one of the levels specified in clause (i).

''(iii) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, in at least one combination that the State has found to be reasonably achievable using commercially available technologies the efficiency of the covered product meets but does not exceed one of the levels specified in clause (i).

''(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding one of the levels specified in subparagraph (B)(i) is on a one-for-one equivalent energy use or equivalent energy cost basis, taking into account the typical lifetime of the product.

''(D) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified

in units of energy or its equivalent cost) and equivalent lifetimes.

"(E) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 323, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 323 or other technically accurate documented procedure.".

(2) Section 327(f)(4)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6297(f)(4)(B)) is amended to read as follows:

"(B) If a building code requires the installation of covered products with efficiencies exceeding the levels and requirements specified in paragraph (3)(B), such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d) of this section.".

SEC. 214. BEST-IN-CLASS APPLIANCES DEPLOYMENT PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy, in consultation with the Administrator, shall establish a program to be known as the ''Best-in-Class Appliances Deployment Program'' to—

(1) provide bonus payments to retailers or distributors under subsection (c) for sales of best-in-class high-efficiency household appliance models, high-efficiency installed building equipment, and high-efficiency consumer electronics, with the goal of reducing life-cycle costs for consumers, encouraging innovation, and maximizing energy savings and public benefit;

(2) provide bounties under subsection (d) to retailers and manufacturers for the replacement, retirement, and recycling of old, inefficient, and environmentally harmful products; and

(3) provide premium awards under subsection (e) to manufacturers for developing and producing new Superefficient Best-in-Class Products.

(b) DESIGNATION OF BEST-IN-CLASS PRODUCT MODELS.—

(1) IN GENERAL.—The Secretary of Energy shall designate product models of appliances, equip-

ment, or electronics as Best-in-Class Product models. The Secretary shall publicly announce the Best-in-Class Product models designated under this subsection. The Secretary shall define product classes broadly and, except as provided in paragraph (2), shall designate as Best-in-Class Product models no more than the most efficient 10 percent of the commercially available product models in a class that demonstrate, as a group, a distinctly greater energy efficiency than the average energy efficiency of that class of appliances, equipment, or electronics. In designating models, the Secretary shall—

(A) identify commercially available models in the relevant class of products;

(B) identify the subgroup of those models that share the distinctly higher energy-efficiency characteristics that warrant designation as best-in-class; and

(C) add other models in that class to the list of Best-in-Class Product models as they demonstrate their ability to meet the higher-efficiency characteristics on which the designation was made.

(2) PERCENTAGE EXCEPTION.—If there are fewer than 10 product models in a class of products,

the Secretary may designate one or more of such models as Best-in-Class Products.

(3) REVIEW OF BEST-IN-CLASS STANDARDS.—The Secretary shall review annually the product-specific criteria for designating, and the product models that qualify as, Best-in-Class Products and, after notice and a 30-day comment period, make upwards adjustments in the efficiency criteria as necessary to maintain an appropriate ratio of such product models to the total number of product models in the product class.

(4) SMART GRID ENERGY EFFICIENCY SAVINGS.—The Secretary shall include energy efficiency savings achieved by a commercially available product having smart grid capability in determining the efficiency level of a product for purposes of a Best-In-Class Product designation pursuant to this subsection. In measuring energy efficiency savings achieved by smart grid capability, the Secretary shall use a metric that—

(A) is based on the time-differentiated value and amount of energy consumption;

(B) accounts for the capability of the product to respond to a smart grid in which the physical capability of the product to save or

delay energy because of a smart grid feature is weighted by the likelihood that the feature will be used;

(C) is based on the value of a unit of electric or gas consumption as a function of time of day and season; and

(D) includes a test method by which the manufacturer shall determine the energy efficiency of smart grid capable products.

(c) BONUSES FOR SALES OF BEST-IN-CLASS PRODUCTS.—

(1) IN GENERAL.—The Secretary of Energy shall make bonus payments to retailers or, as provided in paragraph (5)(B), distributors for the sale of Best-in-Class Products.

(2) BONUS PROGRAM.—The Secretary shall—

(A) publicly announce the availability and amount of the bonus to be paid for each sale of a Best-in-Class Product of a model designated under subsection (b); and

(B) make bonus payments in at least that amount for each Best-in-Class Product of that model sold during the 3-year period beginning on the date the model is designated under subsection (b).

(3) UPGRADE OF BEST-IN-CLASS PRODUCT ELIGIBILITY.—In conducting a review under subsection (b)(3), the Secretary shall—

(A) consider designating as a Best-in-Class Product model a Superefficient Best-in-Class Product model that has been designated pursuant to subsection (e);

(B) announce any change in the bonus payment as necessary to increase the market share of Best-in-Class Product models;

(C) list models that will be eligible for bonuses in the new amount; and

(D) continue paying bonus payments at the original level, for the sale of any models that previously qualified as Best-in-Class Products but do not qualify at the new level, for the remainder of the 3-year period announced with the original designation.

(4) SIZE OF INDIVIDUAL BONUS PAYMENTS.—(A) The size of each bonus payment under this subsection shall be the product of—

(i) an amount determined by the Secretary; and

(ii) the difference in energy consumption between the Best-in-Class Product and the average product in the product class.

(B) The Secretary shall determine the amount under subparagraph (A)(i) for each product type, in consultation with State and utility efficiency program administrators as well as the Administrator, based on estimates of the amount of bonus payment that would provide significant incentive to increase the market share of Best-in-Class Products.

(5) ELIGIBLE BONUS RECIPIENT.—(A) The Secretary shall ensure that not more than 1 bonus payment is provided under this subsection for each Best-in-Class Product.

(B) The Secretary may make distributors eligible to receive bonus payments under this subsection for sales that are not to the final end-user, to the extent that the Secretary determines that for a particular product category distributors are well situated to increase sales of Best-in-Class Products.

(d) BOUNTIES FOR REPLACEMENT, RETIREMENT, AND RECYCLING OF EXISTING LOW-EFFICIENCY PRODUCTS.—

(1) IN GENERAL.—The Secretary of Energy shall make bounty payments to—

(A) retailers for the replacement, retirement, and recycling of older operating low-efficiency products that might otherwise continue in operation; and

(B) manufacturers of Superefficient Best-in-Class Products for the retirement and recycling of older operating low-efficiency products that perform the same function and which might otherwise continue in operation.

(2) BOUNTIES.—Bounties shall be payable—

(A) to a retailer upon documentation that the sale of a Best-in-Class Product was accompanied by the replacement, retirement, and recycling of—

(i) an inefficient but still-functioning product; or

(ii) a nonfunctioning product containing a refrigerant, by the consumer to whom the Best-in-Class Product was sold; and

(B) to a manufacturer upon documentation of the retirement and recycling of—

(i) an inefficient but still-functioning product from a consumer to whom a

Superefficient Best-in-Class Product was delivered; or

(ii) a nonfunctioning product containing a refrigerant from a consumer to whom a Superefficient Best-in-Class Product was delivered.

(3) AMOUNT.—

(A) FUNCTIONING PRODUCTS.—The bounty payment payable under this subsection for a product described in paragraphs (2)(A)(i) and (2)(B)(i) shall be based on the difference between the estimated energy use of the product replaced and the energy use of an average new product in the product class, over the estimated remaining lifetime of the product that was replaced.

(B) NONFUNCTIONING PRODUCTS CONTAINING REFRIGERANTS.—The bounty payment payable under this subsection for a product described in paragraphs (2)(A)(ii) and (2)(B)(ii) shall be in the amount that the Secretary of Energy, in consultation with the Administrator, determines is sufficient to promote the recycling of such products, up to the amount of bounty

for a comparable product described in paragraphs (2)(A) and (2)(B).

(4) RETIREMENT.—The Secretary shall ensure that no product for which a bounty is paid under this subsection is returned to active service, but that it is instead destroyed, and recycled to the extent feasible.

(5) RECYCLING APPLIANCES CONTAINING REFRIGERANTS.—Exclusively for the purpose of implementing the bounty payment program for products containing a refrigerant under this section, the Administrator shall establish standards for environmentally responsible methods of recycling and disposal of refrigerant-containing appliances that, at a minimum, meet the requirements set by the Responsible Appliance Disposal (RAD) Program for refrigerant disposal. The Secretary shall ensure that such standards are met before a bounty payment is made under this subsection for a product containing a refrigerant. Nothing in this section shall be interpreted to alter the requirements of section 608 of the Clean Air Act or to relieve any person from complying with those requirements.

(e) PREMIUM AWARDS FOR DEVELOPMENT AND PRODUCTION OF SUPEREFFICIENT BEST-IN-CLASS PRODUCTS.—

(1) IN GENERAL.—(A) The Secretary of Energy shall provide premium awards to manufacturers for the development and production of Superefficient Best-in-Class Products. The Secretary shall set and periodically revise standards for eligibility of products for designation as a Superefficient Best-in-Class Product.

(B) The Secretary may establish a standard for a Superefficient Best-in-Class Product even if no product meeting that standard exists, if the Secretary has reasonable grounds to conclude that a mass-producible product could be made to meet that standard.

(C) The Secretary may also establish a Superefficient Best-in-Class Product standard that is met by one or more existing Best-in-Class Product models, if those product models have distinct energy efficiency attributes and performance characteristics that make them significantly better than other product models qualifying as best-in-class. The Secretary may not designate as Superefficient Best-in-Class Products under this subparagraph models that rep-

resent more than 10 percent of the currently qualifying Best-in-Class Product models. This subparagraph shall not apply to products designated pursuant to paragraph (4)(A).

(D) In making its finding on the efficiency level a product can achieve for purposes of a Superefficient Best-In-Class Product designation pursuant to this paragraph, the Secretary shall include energy efficiency savings that would be achieved by a product as a result of smart grid capability when a product having such capability can be produced and sold commercially to mass market consumers. In measuring energy efficiency savings achieved by smart grid capability, the Secretary shall use a metric that–

(i) is based on the time-differentiated value and amount of energy consumption;

(ii) accounts for the capability of the product to respond to a smart grid in which the physical capability of the product to save or delay energy because of a smart grid feature is weighted by the likelihood that the feature will be used;

(iii) is based on the value of a unit of electric or gas consumption as a function of time of day and season; and

(iv) includes a test method by which the manufacturer shall determine the energy efficiency of smart grid capable products.

(2) PREMIUM AWARDS.—(A) The premium award payment provided to a manufacturer under this subsection shall be in addition to any bonus payments made under subsection (c).

(B) The amount of the premium award paid per unit of Superefficient Best-in-Class Products sold to retailers or distributors shall, except as provided by subparagraph (F), be the product of—

(i) an amount determined by the Secretary; and

(ii) the difference in energy consumption between the Superefficient Best-in-Class Product and the average product in the product class.

(C) The Secretary shall determine the amount under subparagraph (B)(i) for each product type, in consultation with State and utility efficiency program administrators as well as the Administrator, based on consideration of the present value to the

Nation of the energy (and water or other resources or inputs) saved over the useful life of the product. The Secretary may also take into consideration the methods used to increase sales of qualifying products in determining such amount.

(D) The Secretary may adjust the value described in subparagraph (C) upward or downward as appropriate, including based on the effect of the premium awards on the sales of products in different classes that may be affected by the program under this subsection.

(E) Premium award payments shall be applied to sales of any Superefficient Best-in-Class Product for the first 3 years after designation as a Superefficient Best-in-Class Product.

(F) For years 2011 through 2013, the Secretary shall make bonus payments to manufacturers of the products designated in paragraph (4)(A) for each product produced in the following amounts:

(i) $75 for each dishwasher.

(ii) $250 for each clothes washer.

(iii) $200 for each refrigerator or refrigerator-freezer.

(iv) $250 for each clothes dryer.

(v) $200 for each cooking product.

(vi) $300 for each water heater.

(3) COORDINATION OF INCENTIVES.—No product for which Federal tax credit is received under section 45M of the Internal Revenue Code of 1986 shall be eligible to receive premium award payments pursuant to this subsection.

(4) DESIGNATIONS.—

(A) INITIAL DESIGNATIONS.—Notwithstanding any other provisions of this section, the products the Secretary shall designate as a Superefficient Best-In-Class Product include, but are not limited to, the following products manufactured in 2011 through 2013:

(i) A dishwasher, clothes washer, refrigerator, or refrigerator-freezer that meets the highest efficiency performance standards in its product category as provided in Section 305(b) of the Emergency Economic Stabilization Act of 2008 and has the smart grid capability specified in paragraph (5).

(ii) A water heater that meets an efficiency standard that is the same or equivalent to the standard provided in Section 1333 of the Energy Policy Act of 2005

and has the smart grid capability specified in paragraph (5).

(iii) A clothes dryer or cooking product that the Secretary determines meets the standards specified in subsection (j)(3), which the Secretary shall promulgate no later than one year after the date of enactment, and has the smart grid capability specified in paragraph (5).

(B) EXTENSION OF INITIAL DESIGNATIONS.—

(i) GENERAL.—The Secretary shall in 2013 extend the Superefficient Best-In-Class Product designation of each product specified in subparagraph (A)(i) through (iii) through 2017, provided that for each product designation extended—

(I) the extension will result in significant energy efficiency savings;

(II) the product meets the Superefficient Best-In-Class Product criteria specified in paragraph (1);

(III) the eligibility standards of the product include the smart grid ca-

pability specified in paragraph (5); and

(IV) the Secretary makes appropriate revisions to the eligibility standards of the product as provided by paragraph (1).

(ii) AWARDS.—If a Superefficient Best-In-Class Product designation for a product is extended pursuant to this subparagraph, the premium award for the product shall be determined in accordance with paragraph (2).

(5) SMART GRID CAPABILITY.—

(A) Until the Secretary promulgates criteria under subparagraph (B), the term ''smart grid capability'' means capability of receiving and interpreting time-of-use pricing and peak-load-shed signals from a utility and—

(i) in the case of a cooking product, reducing a minimum of 20 percent during peak demand as measured by the tested average wattage over the course of a typical operating cycle of the product; or

(ii) in the case of a clothes washer, a refrigerator, a dishwasher, a dryer and a

water heater, reducing a minimum of 50 percent during peak demand as measured by the tested average wattage over the course of a typical operating cycle of the product, provided that the typical operating cycle of a refrigerator and a water heater shall be a 24-hour period.

(B) After completion of the analysis required under section 142(b) of this Act, the Secretary shall expeditiously promulgate, after notice and a 30-day public comment period, criteria for what constitutes ''smart grid capability.''

(f) REPORTING.—The Secretary of Energy shall require, as a condition of receiving a bonus, bounty, or premium award under this section, that a report containing the following documentation be provided:

(1) For retailers and distributors, the number of units sold within each product type, and model-specific wholesale purchase prices and retail sale prices, on a monthly basis.

(2) For manufacturers, model-specific energy efficiency and consumption data.

(3) For manufacturers, on an immediate basis, information concerning any product design or func-

1 tion changes that affect the energy consumption of
2 the unit.
3 (4) The methods used to increase the sales of
4 qualifying products.
5 (g) MONITORING AND VERIFICATION PROTOCOLS.—
6 The Secretary of Energy shall establish monitoring and
7 verification protocols for energy consumption tests for
8 each product model and for sales of energy-efficient mod-
9 els. The Secretary shall estimate actual savings of energy
10 from the use of Smart Grid capability in appliances for
11 which premium award payments are made pursuant to
12 subsection (e) as a function of utility and consumer readi-
13 ness to utilize such capability.
14 (h) DISCLOSURE.—The Secretary of Energy may re-
15 quire that manufacturers, retailers and distributors dis-
16 close publicly and to consumers their participation in the
17 program under this section.
18 (i) COST-EFFECTIVENESS REQUIREMENT.—
19 (1) REQUIREMENT.—The Secretary of Energy
20 shall make cost-effectiveness a top priority in design-
21 ing the program under, and administering, this sec-
22 tion, except that the cost-effectiveness of providing
23 premium awards to manufacturers under subsection
24 (e), in aggregate, may be lower by this measure than

that of the bonuses and bounties to retailers and distributors under subsections (c) and (d).

(2) DEFINITIONS.—In this subsection:

(A) COST-EFFECTIVENESS.—The term ''cost-effectiveness'' means a measure of aggregate savings in the cost of energy over the lifetime of a product in relation to the cost to the Secretary of the bonuses, bounties, and premium awards provided under this section for a product.

(B) SAVINGS.—The term ''savings'' means the cumulative megawatt-hours of electricity or million British thermal units of other fuels saved by a product during the projected useful life of the product, in comparison to projected energy consumption of the average product in the same class, taking into consideration the impact of any documented measures to replace, retire, and recycle low-efficiency products at the time of purchase of highly-efficient substitutes.

(j) DEFINITIONS.—In this section—

(1) the term ''distributor'' mean an individual, organization, or company that sells products in multiple lots and not directly to end-users;

(2) the term ''retailer'' means an individual, organization, or company that sells products directly to end-users;

(3) the term ''manufacturer'' means an individual, organization, or company that transforms raw materials into mass-producible finished goods; and

(4) the term ''Superefficient Best-in-Class Product'' means a product that—

(A) can be mass produced; and

(B) achieves the highest level of efficiency that the Secretary of Energy finds can, given the current state of technology, be produced and sold commercially to mass-market consumers.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $600,000,000 for each of the fiscal years 2011 through 2013 to the Secretary of Energy for purposes of this section, and such sums as may be necessary for subsequent fiscal years. Of funds appropriated, not more than 10 percent for any fiscal year may be expended on program administration, and not less than 40 percent of any funds appropriated during fiscal years 2011 through 2013 shall be for purposes of subsection (e).

SEC. 215. WATERSENSE.

(a) IN GENERAL.—There is established within the Environmental Protection Agency a WaterSense program to identify and promote water efficient products, buildings and landscapes, and services in order—

(1) to reduce water use;

(2) to reduce the strain on water, wastewater, and stormwater infrastructure;

(3) to conserve energy used to pump, heat, transport, and treat water; and

(4) to preserve water resources for future generations,

through voluntary labeling of, or other forms of communications about, products, buildings and landscapes, and services that meet the highest water efficiency and performance standards.

(b) DUTIES.—The Administrator shall—

(1) promote WaterSense labeled products, buildings and landscapes, and services in the market place as the preferred technologies and services for—

(A) reducing water use; and

(B) ensuring product and service performance;

(2) work to enhance public awareness of the WaterSense label through public outreach, education, and other means;

(3) establish and maintain performance standards so that products, buildings and landscapes, and services labeled with the WaterSense label perform as well or better than their less efficient counterparts;

(4) publicize the need for proper installation and maintenance of WaterSense products by a licensed, and where certification guidelines exist, WaterSense-certified professional to ensure optimal performance;

(5) preserve the integrity of the WaterSense label;

(6) regularly review and, when appropriate, update WaterSense criteria for categories of products, buildings and landscapes, and services, at least once every four years;

(7) to the extent practical, regularly estimate and make available to the public the production and relative market shares of WaterSense labeled products, buildings and landscapes, and services, at least annually;

(8) to the extent practical, regularly estimate and make available to the public the water and energy savings attributable to the use of WaterSense labeled products, buildings and landscapes, and services, at least annually;

(9) solicit comments from interested parties and the public prior to establishing or revising a WaterSense category, specification, installation criterion, or other criterion (or prior to effective dates for any such category, specification, installation criterion, or other criterion);

(10) provide reasonable notice to interested parties and the public of any changes (including effective dates), on the adoption of a new or revised category, specification, installation criterion, or other criterion, along with—

(A) an explanation of changes; and

(B) as appropriate, responses to comments submitted by interested parties;

(11) provide appropriate lead time (as determined by the Administrator) prior to the applicable effective date for a new or significant revision to a category, specification, installation criterion, or other criterion, taking into account the timing requirements of the manufacturing, marketing, training,

and distribution process for the specific product, building and landscape, or service category addressed; and

(12) identify and, where appropriate, implement other voluntary approaches in commercial, institutional, residential, municipal, and industrial sectors to encourage reuse and recycling technologies, improve water efficiency, or lower water use while meeting, where applicable, the performance standards established under paragraph (3).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $7,500,000 for fiscal year 2010, $10,000,000 for fiscal year 2011, $20,000,000 for fiscal year 2012, and $50,000,000 for fiscal year 2013 and each year thereafter, adjusted for inflation, to carry out this section.

SEC. 216. FEDERAL PROCUREMENT OF WATER EFFICIENT PRODUCTS.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term ''agency'' has the meaning given that term in section 7902(a) of title 5, United States Code.

(2) WATERSENSE PRODUCT OR SERVICE.—The term ''WaterSense product or service'' means a

product or service that is rated for water efficiency under the WaterSense program.

(3) WATERSENSE PROGRAM.—The term ''WaterSense program'' means the program established by section 215 of this Act.

(4) FEMP DESIGNATED PRODUCT.—The term ''FEMP designated product'' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for efficiency.

(5) PRODUCT AND SERVICE.—The terms ''product'' and ''service'' do not include any water consuming product or service designed or procured for combat or combat-related missions. The terms also exclude products or services already covered by the Federal procurement regulations established under section 553 of the National Energy Conservation Policy Act (42 U.S.C. 8259b).

(b) PROCUREMENT OF WATER EFFICIENT PRODUCTS.—

(1) REQUIREMENT.—To meet the requirements of an agency for a water consuming product or service, the head of the agency shall, except as provided in paragraph (2), procure—

(A) a WaterSense product or service; or

(B) a FEMP designated product.

A WaterSense plumbing product should preferably, when possible, be installed by a licensed and, when WaterSense certification guidelines exist, WaterSense-certified plumber or mechanical contractor, and a WaterSense irrigation system should preferably, when possible, be installed, maintained, and audited by a WaterSense-certified irrigation professional to ensure optimal performance.

(2) EXCEPTIONS.—The head of an agency is not required to procure a WaterSense product or service or FEMP designated product under paragraph (1) if the head of the agency finds in writing that—

(A) a WaterSense product or service or FEMP designated product is not cost-effective over the life of the product, taking energy and water cost savings into account; or

(B) no WaterSense product or service or FEMP designated product is reasonably available that meets the functional requirements of the agency.

(3) PROCUREMENT PLANNING.—The head of an agency shall incorporate into the specifications for

all procurements involving water consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of water consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria used for rating WaterSense products and services and FEMP designated products. The head of an agency shall consider, to the maximum extent practicable, additional measures for reducing agency water consumption, including water reuse technologies, leak detection and repair, and use of waterless products that perform similar functions to existing water-consuming products.

(c) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy, working in coordination with the Administrator, shall issue guidelines to carry out this section.

SEC. 217. WATER EFFICIENT PRODUCT REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE STATE.—The term ''eligible State'' means a State that meets the requirements of subsection (b).

(2) RESIDENTIAL WATER EFFICIENT PRODUCT OR SERVICE.—The term ''residential water efficient

product or service'' means a product or service for a residence or its landscape that is rated for water efficiency and performance—

(A) by the WaterSense program, where a WaterSense specification does not exist; or

(B) by a State program and approved by the Administrator.

Categories of water efficient products and services may include faucets, irrigation technologies and services, point-of-use water treatment devices, reuse and recycling technologies, toilets, and showerheads.

(3) STATE PROGRAM.—The term ''State program'' means a State program for administering rebates or vouchers for consumer purchase of water efficient products and services as described in subsection (b)(1).

(4) WATERSENSE PROGRAM.—The term ''WaterSense program'' means the program established by section 215 of this Act.

(b) ELIGIBLE STATES.—A State shall be eligible to receive an allocation under subsection (c) if the State—

(1) establishes (or has established) a State program to provide rebates or vouchers to residential consumers for the purchase of residential water effi-

cient products or services to replace used products of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Administrator may require; and

(3) provides assurances satisfactory to the Administrator that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), for each fiscal year, the Administrator shall allocate to each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (g) for the fiscal year by the ratio that the population of the State in the most recent calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) MINIMUM ALLOCATIONS.—For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Administrator.

(d) USE OF ALLOCATED FUNDS.—Funds allocated to a State under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out a State program.

(e) FIXTURE RECYCLING.—States are encouraged to promote or implement fixture recycling programs to manage the disposal of older fixtures replaced due to the rebate program under this section.

(f) ISSUANCE OF REBATES.—Rebates or vouchers may be provided to residential consumers that meet the requirements of the State program. The State may issue all rebates or vouchers directly to residential consumers or, with approval of the Administrator, delegate some or all rebate and voucher administration to other organizations including, but not limited to, local governments, municipal water authorities, and water utilities. The amount of a rebate or voucher shall be determined by the State, taking into consideration—

(1) the amount of the allocation to the State under subsection (c);

(2) the amount of any Federal or State tax incentive available for the purchase of the residential water efficient product or service;

(3) the amount necessary to change consumer behavior to purchase water efficient products and services; and

(4) the consumer expenditures for onsite preparation, assembly, and original installation of the product.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section $50,000,000 for each of the fiscal years 2010 and 2011, $75,000,000 for fiscal year 2012, $100,000,000 for fiscal year 2013, and $150,000,000 for fiscal year 2014 and each year thereafter, adjusted for inflation.

SEC. 218. CERTIFIED STOVES PROGRAM.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term ''Agency'' means the Environmental Protection Agency.

(2) WOOD STOVE OR PELLET STOVE.—The term ''wood stove or pellet stove'' means a wood stove, pellet stove, or fireplace insert that uses wood or pellets for fuel.

(3) CERTIFIED STOVE.—The term ''certified stove'' means a wood stove or pellet stove that meets the standards of performance for new residential wood heaters under subpart AAA of part 60 of sub-

chapter C of chapter I of title 40, Code of Federal Regulations (or successor regulations), as certified by the Administrator. Pellet stoves and fireplace inserts using pellets for fuel that are exempt from testing by the Administrator but meet the same standards of performance as wood stoves are considered certified for the purposes of this section.

(4) ELIGIBLE ENTITY.—The term ''eligible entity'' means—

(A) a State, a local government, or a federally recognized Indian tribe;

(B) Alaskan Native villages or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 et seq.)); and

(C) a nonprofit organization or institution that—

(i) represents or provides pollution reduction or educational services relating to wood smoke minimization to persons, organizations, or communities; or

(ii) has, as its principal purpose, the promotion of air quality or energy efficiency.

(b) ESTABLISHMENT.—The Administrator shall establish and carry out a program to assist in the replacement of wood stoves or pellet stoves that do not meet the standards of performance referred to in subsection (a)(4) by—

(1) requiring that each wood stove or pellet stove sold in the United States on and after the date of enactment of this Act meet the standards of performance referred to in subsection (a)(4);

(2) requiring that no wood stove or pellet stove replaced under this program is sold or returned to active service, but that it is instead destroyed and recycled to the maximum extent feasible;

(3) providing funds to an eligible entity to replace a wood stove or pellet stove that does not meet the standards of performance in subsection (a)(4) with a certified stove, including funds to pay for—

(A) installation of a replacement certified stove; and

(B) necessary replacement of or repairs to ventilation, flues, chimneys, or other relevant items necessary for safe installation of a replacement certified stove;

(4) in addition to any funds that may be appropriated for the program under this subsection, using

existing Federal, State, and local programs and incentives, to the greatest extent practicable;

(5) prioritizing the replacement of wood stoves or pellet stoves manufactured before July 1, 1990; and

(6) carrying out such other activities as the Administrator determines appropriate to facilitate the replacement of wood stoves or pellet stoves that do not meet the standards of performance referred to in subsection (a)(3).

(c) REGULATIONS.—The Administrator may promulgate such regulations as are necessary to carry out the program established under subsection (b).

(d) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the program under this section $20,000,000 for the period of fiscal years 2010 through 2014.

(2) DESIGNATED USE.—Of amounts appropriated pursuant to this subsection—

(A) 25 percent shall be designated for use to carry out the program under this section on lands held in trust for the benefit of a federally recognized Indian tribe;

(B) 3 percent shall be designated for use to carry out the program under this section in Alaskan Native villages or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 et seq.)); and

(C) 72 percent shall be designated for use to carry out the program under this section nationwide.

(3) REGULATORY PROGRAMS.—

(A) IN GENERAL.—No grant or loan provided under this section shall be used to fund the costs of emissions reductions that are mandated under Federal, State, or local law.

(B) MANDATED.—For purposes of subparagraph (A), voluntary or elective emission reduction measures shall not be considered ''mandated'', regardless of whether the reductions are included in the implementation plan of a State.

(e) EPA AUTHORITY TO ACCEPT WOOD STOVE OR PELLET STOVE REPLACEMENT SUPPLEMENTAL ENVIRONMENTAL PROJECTS.—

(1) IN GENERAL.—The Administrator may accept (notwithstanding sections 3302 and 1301 of

1 title 31, United States Code) wood stove or pellet
2 stove replacement Supplemental Environmental
3 Projects if such projects, as part of a settlement of
4 any alleged violation of environmental law—
5 (A) protect human health or the environ-
6 ment;
7 (B) are related to the underlying alleged
8 violation;
9 (C) do not constitute activities that the de-
10 fendant would otherwise be legally required to
11 perform; and
12 (D) do not provide funds for the staff of
13 the Agency or for contractors to carry out the
14 Agency's internal operations.
15 (2) CERTIFICATION.—In any settlement agree-
16 ment regarding an alleged violation of environmental
17 law in which a defendant agrees to perform a wood
18 stove or pellet stove replacement Supplemental Envi-
19 ronmental Project, the Administrator shall require
20 the defendant to include in the settlement docu-
21 ments a certification under penalty of law that the
22 defendant would have agreed to perform a com-
23 parably valued, alternative project other than a wood
24 stove or pellet stove replacement Supplemental Envi-
25 ronmental Project if the Administrator were pre-

cluded by law from accepting a wood stove or pellet stove replacement Supplemental Environmental Project. A failure by the Administrator to include this language in such a settlement agreement shall not create a cause of action against the United States under the Clean Air Act or any other law or create a basis for overturning a settlement agreement entered into by the United States.

SEC. 219. ENERGY STAR STANDARDS.

(a) ENERGY STAR.—Section 324A(c) of the Energy Policy and Conservation Act is amended—

(1) in paragraph (6)(B), by striking ''and'' after the semicolon at the end;

(2) in paragraph (7), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(8) not later than 18 months after the date of enactment of this paragraph, establish and implement a rating system for products identified as Energy Star products pursuant to this section to provide consumers with the most helpful information on the relative energy efficiency of those products, unless the Administrator and the Secretary communicate to Congress that establishing such a system

would diminish the value of the Energy Star brand to consumers;

"(9)(A) review the Energy Star product criteria for the 10 product models in each product category with the greatest energy consumption at least once every 3 years; and

"(B) based on the review, update and publish the Energy Star product criteria for each such category, as necessary; and

"(10) require periodic verification of compliance with the Energy Star product criteria by products identified as Energy Star products pursuant to this section, including—

"(A) purchase and testing of products from the market; or

"(B) other appropriate testing and compliance approaches.".

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the amendments made by this section $5,000,000 for fiscal year 2010 and for each fiscal year thereafter.

Subtitle C—Transportation Efficiency

SEC. 221. EMISSIONS STANDARDS.

Title VIII of the Clean Air Act, as added by section 331 of this Act, is amended by inserting after part A the following new part:

"PART B—MOBILE SOURCES

"SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR MOBILE SOURCES.

''(a) NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES.—(1) Pursuant to section 202(a)(1), by December 31, 2010, the Administrator shall promulgate standards applicable to emissions of greenhouse gases from new heavy-duty motor vehicles or new heavy-duty motor vehicle engines, excluding such motor vehicles covered by the Tier II standards (as established by the Administrator as of the date of the enactment of this section). The Administrator may revise these standards from time to time.

''(2) Regulations issued under section 202(a)(1) applicable to emissions of greenhouse gases from new heavy-duty motor vehicles or new heavy-duty motor vehicle engines, excluding such motor vehicles covered by the Tier II standards (as established by the Administrator as of the date of the enactment of this section), shall contain

standards that reflect the greatest degree of emissions reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology. Any such regulations shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, and, at a minimum, shall apply for a period no less than 3 model years beginning no earlier than the model year commencing 4 years after such regulations are promulgated.

"(3) Regulations issued under section 202(a)(1) applicable to emissions of greenhouse gases from new heavy-duty motor vehicles or new heavy-duty motor vehicle engines, excluding such motor vehicles covered by the Tier II standards (as established by the Administrator as of the date of the enactment of this section), shall supersede and satisfy any and all of the rulemaking and compliance requirements of section 32902(k) of title 49, United States Code.

"(4) Other than as specifically set forth in paragraph (3) of this subsection, nothing in this section shall affect or otherwise increase or diminish the authority of the Secretary of Transportation to adopt regulations to improve

the overall fuel efficiency of the commercial goods movement system.

"(b) NONROAD VEHICLES AND ENGINES.—(1) Pursuant to section 213(a)(4) and (5), the Administrator shall identify those classes or categories of new nonroad vehicles or engines, or combinations of such classes or categories, that, in the judgment of the Administrator, both contribute significantly to the total emissions of greenhouse gases from nonroad engines and vehicles, and provide the greatest potential for significant and cost-effective reductions in emissions of greenhouse gases. The Administrator shall promulgate standards applicable to emissions of greenhouse gases from these new nonroad engines or vehicles by December 31, 2012. The Administrator shall also promulgate standards applicable to emissions of greenhouse gases for such other classes and categories of new nonroad vehicles and engines as the Administrator determines appropriate and in the timeframe the Administrator determines appropriate. The Administrator shall base such determination, among other factors, on the relative contribution of greenhouse gas emissions, and the costs for achieving reductions, from such classes or categories of new nonroad engines and vehicles. The Administrator may revise these standards from time to time.

"(2) Standards under section 213(a)(4) and (5) applicable to emissions of greenhouse gases from those classes or categories of new nonroad engines or vehicles identified in the first sentence of paragraph (1) of this subsection, shall achieve the greatest degree of emissions reduction achievable based on the application of technology which the Administrator determines will be available at the time such standards take effect, taking into consideration cost, energy, and safety factors associated with the application of such technology. Any such regulations shall take effect at the earliest possible date after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period, the applicable compliance dates for other standards, and other appropriate factors, including the period of time appropriate for the transfer of applicable technology from other applications, including motor vehicles, and the period of time in which previously promulgated regulations have been in effect.

"(3) For purposes of this section and standards under section 213(a)(4) or (5) applicable to emissions of greenhouse gases, the term 'nonroad engines and vehicles' shall include non-internal combustion engines and the vehicles these engines power (such as electric engines and

electric vehicles), for those non-internal combustion engines and vehicles which would be in the same category and have the same uses as nonroad engines and vehicles that are powered by internal combustion engines.

"(c) AVERAGING, BANKING, AND TRADING OF EMISSIONS CREDITS.—In establishing standards applicable to emissions of greenhouse gases pursuant to this section and sections 202(a), 213(a)(4) and (5), and 231(a), the Administrator may establish provisions for averaging, banking, and trading of greenhouse gas emissions credits within or across classes or categories of motor vehicles and motor vehicle engines, nonroad vehicles and engines (including marine vessels), and aircraft and aircraft engines, to the extent the Administrator determines appropriate and considering the factors appropriate in setting standards under those sections. Such provisions may include reasonable and appropriate provisions concerning generation, banking, trading, duration, and use of credits.

"(d) REPORTS.—The Administrator shall, from time to time, submit a report to Congress that projects the amount of greenhouse gas emissions from the transportation sector, including transportation fuels, for the years 2030 and 2050, based on the standards adopted under this section.

"(e) GREENHOUSE GASES.—Notwithstanding the provisions of section 711, hydrofluorocarbons shall be considered a greenhouse gas for purposes of this section.".

SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS THROUGH TRANSPORTATION EFFICIENCY.

(a) ENVIRONMENTAL PROTECTION AGENCY.—Title VIII of the Clean Air Act, as added by section 331 of this Act, is further amended by inserting after part C the following new part:

"PART D—TRANSPORTATION EMISSIONS

"SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS THROUGH TRANSPORTATION EFFICIENCY.

"(a) IN GENERAL.—The Administrator, in consultation with the Secretary of Transportation, shall promulgate, and update from time to time, regulations to establish national transportation-related greenhouse gas emissions reduction goals, standardized models and methodologies for use in developing surface transportation-related greenhouse gas emissions reduction targets pursuant to sections 134 and 135 of title 23 of the United States Code and methods for collection of data on transportation-related greenhouse gas emissions. Such goals shall be commensurate with the emissions reductions goals established under the American Clean Energy and Security Act of 2009. In establishing such goals, models, and methodolo-

gies, the Administrator shall consult with States and metropolitan planning organizations and may utilize existing models and methodologies.

"(b) TIMING.—The Administrator shall—

"(1) publish proposed regulations under subsection (a) not later than 12 months after the date of enactment of this section; and

"(2) promulgate final regulations under subsection (a) not later than 18 months after the date of enactment of this section.

"(c) ASSESSMENT.—At least every 6 years after promulgating final regulations under subsection (a), the Administrator, jointly with the Secretary of Transportation, shall assess current and projected progress in reducing national transportation-related greenhouse gas emissions. The assessment shall examine the contributions to emissions reductions attributable to improvements in vehicle efficiency, greenhouse gas performance of transportation fuels, increased efficiency in utilizing transportation systems and the effects of local and State planning.".

(b) METROPOLITAN PLANNING ORGANIZATIONS.—Section 134 of title 23 of the United States Code is amended as follows:

(1) In subsection (a)(1)—

(A) by striking ''minimizing'' and inserting ''reducing''; and

(B) by inserting '', reliance on oil, impacts on the environment, transportation-related greenhouse gas emissions'' after ''consumption''.

(2) In subsection (h)(1)(E)—

(A) by inserting ''sustainability and livability, reduce surface transportation-related greenhouse gas emissions and reliance on oil, adapt to the effects of climate change,'' after ''energy conservation'';

(B) by inserting ''and public health'' after ''quality of life''; and

(C) by inserting '', including housing and land use patterns'' after ''development patterns''.

(3) In subsection (i)(4)(A) by inserting ''air quality, public health, housing, transportation,'' after ''conservation,''.

(4) In subsection (k) by inserting at the end the following new paragraph:

''(6) EMISSIONS REDUCTION PROCESS.—

''(A) IN GENERAL.—Within a metropolitan planning area serving a transportation manage-

ment area, the transportation planning process under this section shall address transportation-related greenhouse gas emissions by including emission reduction targets and strategies.

"(B) ESTABLISHMENT OF EMISSIONS REDUCTION TARGETS AND STRATEGIES.—

"(i) IN GENERAL.—Not later than one year after the promulgation of the final regulations required under section 841 of the Clean Air Act, each metropolitan planning organization shall develop surface transportation-related greenhouse gas emission reduction targets, as well as strategies to meet such targets, as part of the transportation planning process under this section. If more than one metropolitan planning organization has been designated within a metropolitan planning area serving a transportation management area, each such metropolitan planning organization shall work cooperatively with other such organization to develop the surface transportation-related greenhouse gas emission reduction targets required under this subparagraph.

"(ii) MINIMUM REQUIREMENTS.—Each metropolitan planning organization that develops targets and strategies required under clause (i) shall demonstrate progress in stabilizing and reducing transportation-related greenhouse gas emissions in each metropolitan planning area serving a surface transportation management area. The targets and strategies shall, at a minimum—

"(I) be based on the models and methodologies established in the final regulations required under section 841 of the Clean Air Act;

"(II) address sources of surface transportation-related greenhouse gas emissions and contribute to achievement of the national transportation-related greenhouse gas emissions reduction goals;

"(III) include efforts to increase public transportation ridership; and

"(IV) include efforts to increase walking, bicycling, and other forms of nonmotorized transportation.

"(C) PUBLIC NOTICE.—Each metropolitan planning organization shall make its emission reduction targets and strategies, and an analysis of the anticipated effects thereof, available to the public through its Web site.

"(D) ENFORCEMENT.—If the Secretary finds that a metropolitan planning organization has failed to develop, submit or publish its emission reduction targets and strategies, the Secretary shall not certify that the requirements of this section are met with respect to the metropolitan planning process of such organization.".

(c) STATES.—Section 135 of title 23 of the United States Code is amended as follows:

(1) In subsection (d)(1)(E)—

(A) by inserting "sustainability and livability, reduce surface transportation-related greenhouse gas emissions and reliance on oil, adapt to the effects of climate change," after "energy conservation";

(B) by inserting "and public health" after "quality of life"; and

(C) by inserting ", including housing and land use patterns" after "development patterns".

(2) In subsection (f)(2)(D)(i) by inserting "air quality, public health, housing, transportation," after "conservation,".

(3) In subsection (f) by inserting at the end the following new paragraph:

"(9) EMISSIONS REDUCTION PROCESS.—

"(A) IN GENERAL.—Within a State, the transportation planning process under this section shall address transportation-related greenhouse gas emissions by including emission reduction targets and strategies.

"(B) ESTABLISHMENT OF EMISSIONS REDUCTION TARGETS AND STRATEGIES.—

"(i) IN GENERAL.—Not later than one year after the promulgation of the final regulations required under section 841 of the Clean Air Act, each State shall develop surface transportation-related greenhouse gas emission reduction targets, as well as strategies to meet such targets, as part of the transportation planning process under this section.

"(ii) MINIMUM REQUIREMENTS.—Each State that develops targets and strategies required under clause (i) shall demonstrate progress in stabilizing and reducing transportation-related greenhouse gas emissions in such State. The targets and strategies shall, at a minimum,

"(I) be based on the models and methodologies established in the final regulations required under section 841 of the Clean Air Act;

"(II) address sources of surface transportation-related greenhouse gas emissions and contribute to achievement of the national transportation-related greenhouse gas emissions reduction goals;

"(III) include efforts to increase public transportation ridership; and

"(IV) include efforts to increase walking, bicycling, and other forms of nonmotorized transportation.

"(D) PUBLIC NOTICE.—Each State shall make its emission reduction targets and strategies, and an analysis of the anticipated effects

thereof, available to the public through its Web site.

"(E) ENFORCEMENT.—If the Secretary finds that a State has failed to develop, submit or publish its emission reduction targets and strategies, the Secretary shall not certify that the requirements of this section are met with respect to the statewide planning process of such State.".

(d) DEPARTMENT OF TRANSPORTATION.—The Secretary of Transportation shall establish appropriate requirements, including performance measures, to ensure that transportation plans developed under sections 134 and 135 of title 23 of the United States Code sufficiently meet the requirements of this section, including achieving progress towards national transportation-related greenhouse gas emissions reduction goals.

SEC. 223. SMARTWAY TRANSPORTATION EFFICIENCY PROGRAM.

Part B of title VIII of the Clean Air Act, as added by section 221 of this Act is amended by adding after section 821 the following section:

"SEC. 822. SMARTWAY TRANSPORTATION EFFICIENCY PROGRAM.

"(a) IN GENERAL.—There is established within the Environmental Protection Agency a SmartWay Transport Program to quantify, demonstrate, and promote the benefits of technologies, products, fuels, and operational strategies that reduce petroleum consumption, air pollution, and greenhouse gas emissions from the mobile source sector.

"(b) GENERAL DUTIES.—Under the program established under this section, the Administrator shall carry out each of the following:

"(1) Development of measurement protocols to evaluate the energy consumption and greenhouse gas impacts from technologies and strategies in the mobile source sector, including those for passenger transport and goods movement.

"(2) Development of qualifying thresholds for certifying, verifying, or designating energy-efficient, low-greenhouse gas SmartWay technologies and strategies for each mode of passenger transportation and goods movement.

"(3) Development of partnership and recognition programs to promote best practices and drive demand for energy-efficient, low-greenhouse gas transportation performance.

"(4) Promotion of the availability of, and encouragement of the adoption of, SmartWay certified or verified technologies and strategies, and publication of the availability of financial incentives, such as assistance from loan programs and other Federal and State incentives.

"(c) SMARTWAY TRANSPORT FREIGHT PARTNERSHIP.—The Administrator shall establish a SmartWay Transport Freight Partnership program with shippers and carriers of goods to promote energy-efficient, low-greenhouse gas transportation. In carrying out such partnership, the Administrator shall undertake each of the following:

"(1) Certification of the energy and greenhouse gas performance of participating freight carriers, including those operating rail, trucking, marine, and other goods movement operations.

"(2) Publication of a comprehensive energy and greenhouse gas performance index of freight modes (including rail, trucking, marine, and other modes of transporting goods) and individual freight companies so that shippers can choose to deliver their goods more efficiently.

"(3) Development of tools for—

"(A) carriers to calculate their energy and greenhouse gas performance; and

"(B) shippers to calculate the energy and greenhouse gas impacts of moving their products and to evaluate the relative impacts from transporting their goods by different modes and corporate carriers.

"(4) Provision of recognition opportunities for participating shipper and carrier companies demonstrating advanced practices and achieving superior levels of greenhouse gas performance.

"(d) IMPROVING FREIGHT GREENHOUSE GAS PERFORMANCE DATABASES.—The Administrator shall, in coordination with other appropriate agencies, define and collect data on the physical and operational characteristics of the Nation's truck population, with special emphasis on data related to energy efficiency and greenhouse gas performance to inform the performance index published under subsection (c)(2) of this section, and other means of goods transport as necessary, at least every 5 years.

"(e) ESTABLISHMENT OF FINANCING PROGRAM.—The Administrator shall establish a SmartWay Financing Program to competitively award funding to eligible entities identified by the Administrator in accordance with the program requirements in subsection (g).

1 "(f) PURPOSE.—Under the SmartWay Financing
2 Program, eligible entities shall—
3 "(1) use funds awarded by the Administrator to
4 provide flexible loan and lease terms that increase
5 approval rates or lower the costs of loans and leases
6 in accordance with guidance developed by the Ad-
7 ministrator; and
8 "(2) make such loans and leases available to
9 public and private entities for the purpose of adopt-
10 ing low-greenhouse gas technologies or strategies for
11 the mobile source sector that are designated by the
12 Administrator.
13 "(g) PROGRAM REQUIREMENTS.—The Administrator
14 shall determine program design elements and require-
15 ments, including—
16 "(1) the type of financial mechanism with
17 which to award funding, in the form of grants or
18 contracts;
19 "(2) the designation of eligible entities to re-
20 ceive funding, including State, tribal, and local gov-
21 ernments, regional organizations comprised of gov-
22 ernmental units, nonprofit organizations, or for-prof-
23 it companies;
24 "(3) criteria for evaluating applications from el-
25 igible entities, including anticipated—

"(A) cost-effectiveness of loan or lease program on a metric-ton-of-greenhouse gas-saved-per-dollar basis;

"(B) ability to promote the loan or lease program and associated technologies and strategies to the target audience; and

"(4) reporting requirements for entities that receive awards, including—

"(A) actual cost-effectiveness and greenhouse gas savings from the loan or lease program based on a methodology designated by the Administrator;

"(B) the total number of applications and number of approved applications; and

"(C) terms granted to loan and lease recipients compared to prevailing market practices.

"(h) AUTHORIZATION OF APPROPRIATIONS.—Such sums as necessary are authorized to be appropriated to the Administrator to carry out this section.".

SEC. 224. STATE VEHICLE FLEETS.

Section 507(o) of the Energy Policy Act of 1992 (42 U.S.C. 13257) is amended by adding the following new paragraph at the end thereof:

"(3) The Secretary shall revise the rules under this subsection with respect to the types of alternative fueled vehicles required for compliance with this subsection to ensure those rules are consistent with any guidance issued pursuant to section 303 of this Act.".

Subtitle D—Industrial Energy Efficiency Programs

SEC. 241. INDUSTRIAL PLANT ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall continue to support the development of the American National Standards Institute (ANSI) voluntary industrial plant energy efficiency certification program, pending International Standards Organization (ISO) consensus standard 50001, and other related ANSI/ISO standards. In addition, the Department shall undertake complementary activities through the Department of Energy's Industry Technologies Program that support the voluntary implementation of such standards by manufacturing firms. There are authorized to be appropriated to the Secretary such sums as are necessary to carry out these activities. The Secretary shall report to Congress on the status of standards development and plans for further standards development pursuant to this section by not later than 18 months after the date of en-

actment of this Act, and shall prepare a second such report 18 months thereafter.

SEC. 242. ELECTRIC AND THERMAL WASTE ENERGY RECOVERY AWARD PROGRAM.

(a) ELECTRIC AND THERMAL WASTE ENERGY RECOVERY AWARDS.—The Secretary of Energy shall establish a program to make monetary awards to the owners and operators of new and existing electric energy generation facilities or thermal energy production facilities using fossil or nuclear fuel, to encourage them to use innovative means of recovering any thermal energy that is a potentially useful byproduct of electric power generation or other processes to—

(1) generate additional electric energy; or

(2) make sales of thermal energy not used for electric generation, in the form of steam, hot water, chilled water, or desiccant regeneration, or for other commercially valid purposes.

(b) AMOUNT OF AWARDS.—

(1) ELIGIBILITY.—Awards shall be made under subsection (a) only for the use of innovative means that achieve net energy efficiency at the facility concerned significantly greater than the current standard technology in use at similar facilities.

(2) AMOUNT.—The amount of an award made under subsection (a) shall equal an amount up to the value of 25 percent of the energy projected to be recovered or generated during the first 5 years of operation of the facility using the innovative energy recovery method, or such lesser amount that the Secretary determines to be the minimum amount that can cost-effectively stimulate such innovation.

(3) LIMITATION.—No person may receive an award under this section if a grant under the waste energy incentive grant program under section 373 of the Energy Policy and Conservation Act (42 U.S.C. 6343) is made for the same energy savings resulting from the same innovative method.

(c) REGULATORY STATUS.—The Secretary of Energy shall—

(1) assist State regulatory commissions to identify and make changes in State regulatory programs for electric utilities to provide appropriate regulatory status for thermal energy byproduct businesses of regulated electric utilities to encourage those utilities to enter businesses making the sales referred to in subsection (a)(2); and

(2) encourage self-regulated utilities to enter businesses making the sales referred to in subsection (a)(2).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy such sums as are necessary for the purposes of this section.

SEC. 243. CLARIFYING ELECTION OF WASTE HEAT RECOVERY FINANCIAL INCENTIVES.

Section 373(e) of the Energy Policy and Conservation Act (42 U.S.C. 6343(e)) is amended—

(1) by striking ''that qualifies for'' and inserting ''who elects to claim''; and

(2) by inserting ''from that project'' after ''for waste heat recovery''.

SEC. 244. MOTOR MARKET ASSESSMENT AND COMMERCIAL AWARENESS PROGRAM.

(a) FINDINGS.—Congress finds that—

(1) electric motor systems account for about half of the electricity used in the United States;

(2) electric motor energy use is determined by both the efficiency of the motor and the system in which the motor operates;

(3) Federal Government research on motor end use and efficiency opportunities is more than a decade old; and

(4) the Census Bureau has discontinued collection of data on motor and generator importation, manufacture, shipment, and sales.

(b) DEFINITIONS.—In this section:

(1) DEPARTMENT.—The term ''Department'' means the Department of Energy.

(2) INTERESTED PARTIES.—The term ''interested parties'' includes—

(A) trade associations;

(B) motor manufacturers;

(C) motor end users;

(D) electric utilities; and

(E) individuals and entities that conduct energy efficiency programs.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Energy, in consultation with interested parties.

(c) ASSESSMENT.—The Secretary shall conduct an assessment of electric motors and the electric motor market in the United States that shall—

(1) include important subsectors of the industrial and commercial electric motor market (as determined by the Secretary), including—

(A) the stock of motors and motor-driven equipment;

(B) efficiency categories of the motor population; and

(C) motor systems that use drives, servos, and other control technologies;

(2) characterize and estimate the opportunities for improvement in the energy efficiency of motor systems by market segment, including opportunities for—

(A) expanded use of drives, servos, and other control technologies;

(B) expanded use of process control, pumps, compressors, fans or blowers, and material handling components; and

(C) substitution of existing motor designs with existing and future advanced motor designs, including electronically commutated permanent magnet, interior permanent magnet, and switched reluctance motors; and

(3) develop an updated profile of motor system purchase and maintenance practices, including sur-

1 veying the number of companies that have motor
2 purchase and repair specifications, by company size,
3 number of employees, and sales.
4 (d) RECOMMENDATIONS; UPDATE.—Based on the as-
5 sessment conducted under subsection (c), the Secretary
6 shall—
7 (1) develop—
8 (A) recommendations to update the de-
9 tailed motor profile on a periodic basis;
10 (B) methods to estimate the energy sav-
11 ings and market penetration that is attributable
12 to the Save Energy Now Program of the De-
13 partment; and
14 (C) recommendations for the Director of
15 the Census Bureau on market surveys that
16 should be undertaken in support of the motor
17 system activities of the Department; and
18 (2) prepare an update to the Motor Master+
19 program of the Department.
20 (e) PROGRAM.—Based on the assessment, rec-
21 ommendations, and update required under subsections (c)
22 and (d), the Secretary shall establish a proactive, national
23 program targeted at motor end-users and delivered in co-
24 operation with interested parties to increase awareness
25 of—

(1) the energy and cost-saving opportunities in commercial and industrial facilities using higher efficiency electric motors;

(2) improvements in motor system procurement and management procedures in the selection of higher efficiency electric motors and motor-system components, including drives, controls, and driven equipment; and

(3) criteria for making decisions for new, replacement, or repair motor and motor system components.

SEC. 245. MOTOR EFFICIENCY REBATE PROGRAM.

(a) IN GENERAL.—Part C of title III of the Energy Policy and Conservation Act (42 U.S.C. 6311 et seq.) is amended by adding at the end the following:

"SEC. 347. MOTOR EFFICIENCY REBATE PROGRAM.

"(a) ESTABLISHMENT.—Not later than January 1, 2010, in accordance with subsection (b), the Secretary shall establish a program to provide rebates for expenditures made by entities—

"(1) for the purchase and installation of a new electric motor that has a nominal full load efficiency that is not less than the nominal full load efficiency as defined in—

"(A) table 12–12 of NEMA Standards Publication MG 1–2006 for random wound motors rated 600 volts or lower; or

"(B) table 12–13 of NEMA Standards Publication MG 1–2006 for form wound motors rated 5000 volts or lower; and

"(2) to replace an installed motor of the entity the specifications of which are established by the Secretary by a date that is not later than 90 days after the date of enactment of this section.

"(b) REQUIREMENTS.—

"(1) APPLICATION.—To be eligible to receive a rebate under this section, an entity shall submit to the Secretary an application in such form, at such time, and containing such information as the Secretary may require, including—

"(A) demonstrated evidence that the entity purchased an electric motor described in subsection (a)(1) to replace an installed motor described in subsection (a)(2);

"(B) demonstrated evidence that the entity—

"(i) removed the installed motor of the entity from service; and

"(ii) properly disposed the installed motor of the entity; and

"(C) the physical nameplate of the installed motor of the entity.

"(2) AUTHORIZED AMOUNT OF REBATE.—The Secretary may provide to an entity that meets each requirement under paragraph (1) a rebate the amount of which shall be equal to the product obtained by multiplying—

"(A) the nameplate horsepower of the electric motor purchased by the entity in accordance with subsection (a)(1); and

"(B) $25.00.

"(3) PAYMENTS TO DISTRIBUTORS OF QUALIFYING ELECTRIC MOTORS.—To assist in the payment for expenses relating to processing and motor core disposal costs, the Secretary shall provide to the distributor of an electric motor described in subsection (a)(1), the purchaser of which received a rebate under this section, an amount equal to the product obtained by multiplying—

"(A) the nameplate horsepower of the electric motor; and

"(B) $5.00.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, to remain available until expended—

"(1) $80,000,000 for fiscal year 2011;

"(2) $75,000,000 for fiscal year 2012;

"(3) $70,000,000 for fiscal year 2013;

"(4) $65,000,000 for fiscal year 2014; and

"(5) $60,000,000 for fiscal year 2015.".

(b) TABLE OF CONTENTS.—The table of contents of the Energy Policy and Conservation Act (42 U.S.C. prec. 6201) is amended by adding at the end of the items relating to part C of title III the following:

"Sec. 347. Motor efficiency rebate program.".

Subtitle E—Improvements in Energy Savings Performance Contracting

SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) COMPETITION REQUIREMENTS FOR TASK OR DELIVERY ORDERS UNDER ENERGY SAVINGS PERFORMANCE CONTRACTS.—

(1) COMPETITION REQUIREMENTS.—Subsection (a) of section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following paragraph:

"(3)(A) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—

"(i) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities and, following a reasonable period of time to provide a proposal in response to the notice, soliciting an expression of interest in performing site surveys or investigations and feasibility designs and studies and the submission of qualifications from such contractors, and including in such notice summary information concerning energy use for any facilities that the agency has specific interest in including in such contract;

"(ii) reviewing all expressions of interest and qualifications submitted pursuant to the notice under clause (i);

"(iii) selecting two or more contractors (from among those reviewed under clause (ii)) to conduct discussions concerning the contractors' respective qualifications to implement potential energy conservation measures, including requesting references demonstrating experience on similar efforts and the resulting energy savings of such similar efforts, and

1 providing an opportunity for a post-award debriefing
2 to all contractors that submitted expressions of in-
3 terest and qualifications under clause (ii) pursuant
4 to the notice;
5 ''(iv) selecting and authorizing—
6 ''(I) more than one contractor (from
7 among those selected under clause (iii)) to con-
8 duct site surveys, investigations, feasibility de-
9 signs and studies or similar assessments for the
10 energy savings performance contract services
11 (or for discrete portions of such services), for
12 the purpose of allowing each such contractor to
13 submit a firm, fixed-price proposal to imple-
14 ment specific energy conservation measures; or
15 ''(II) one contractor (from among those se-
16 lected under clause (iii)) to conduct a site sur-
17 vey, investigation, a feasibility design and study
18 or similar for the purpose of allowing the con-
19 tractor to submit a firm, fixed-price proposal to
20 implement specific energy conservation meas-
21 ures;
22 ''(v) negotiating a task or delivery order for en-
23 ergy savings performance contracting services with
24 the contractor or contractors selected under clause

(iv) based on the energy conservation measures identified; and

"(vi) issuing a task or delivery order for energy savings performance contracting services to such contractor or contractors.

"(B) The issuance of a task or delivery order for energy savings performance contracting services pursuant to subparagraph (A) is deemed to satisfy the task and delivery order competition requirements in section 2304c(d) of title 10, United States Code, and section 303J(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(d)).

"(C) The Secretary may issue guidance as necessary to agencies issuing task or delivery orders pursuant to subparagraph (A).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) is inapplicable to task or delivery orders issued before the date of enactment of this section.

(b) INCLUSION OF THERMAL RENEWABLE ENERGY.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

(1) in subsection (a), by striking "electric"; and

(2) in subsection (b)(2), by inserting "or thermal" after "means electric".

(c) CREDIT FOR RENEWABLE ENERGY PRODUCED AND USED ON SITE.—Subsection (c) of section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended to read as follows:

''(c) CALCULATION.—Renewable energy produced at a Federal facility, on Federal lands, or on Indian lands (as defined in title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.)) shall be calculated separately from renewable energy consumed at a Federal facility, and each may be used to comply with the consumption requirement under subsection (a).''.

(d) FINANCING FLEXIBILITY.—Section 801(a)(2)(E) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)(E)) is amended by striking ''In'' and inserting ''Notwithstanding any other provision of law, in''.

Subtitle F—Public Institutions

SEC. 261. PUBLIC INSTITUTIONS.

Section 399A of the Energy Policy and Conservation Act (42 U.S.C. 6371h–1) is amended—

(1) in subsection (a)(5), by striking ''or a designee'' and inserting ''an Indian tribe, a not-for-profit hospital or not-for-profit inpatient health care facility, or a designated agent'';

(2) in subsection (c)(1), by striking subparagraph (C);

(3) in subsection (f)(3)(A), by striking ''$1,000,000'' and inserting ''$2,500,000''; and

(4) in subsection (i)(1), by striking ''$250,000,000 for each of fiscal years 2009 through 2013'' and inserting ''$250,000,000 for each of fiscal years 2010 through 2015''.

SEC. 262. COMMUNITY ENERGY EFFICIENCY FLEXIBILITY.

Section 545(b)(3) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17155(b)(3)) is amended—

(1) by striking ''Indian tribe may use'' and all that follows through ''for administrative expenses'' and inserting ''Indian tribe may use for administrative expenses'';

(2) by striking subparagraphs (B) and (C);

(3) by redesignating the remaining clauses (i) and (ii) as subparagraphs (A) and (B), respectively and adjusting the margin of those subparagraphs accordingly; and

(4) by striking the semicolon at the end and inserting a period.

SEC. 263. SMALL COMMUNITY JOINT PARTICIPATION.

(a) Section 541(3)(A) of the Energy Independence and Security Act of 2007 is amended in clause (i) by striking ''and'' at the end of subclause (II), in clause (ii) by striking the period at the end of subclause (II) and inserting ''; or'', and by inserting the following new clause (iii):

''(iii) a group of adjacent, contiguous, or geographically proximate units of local government that reach agreement to act jointly for purposes of this section and that represent a combined population of not less than 35,000.''.

(b) Section 541(3)(B) of the Energy Independence and Security Act of 2007 is amended in clause (i) by striking ''or'', in clause (ii) by striking the period at the end and inserting ''; or'', and by inserting the following new clause (iii):

''(iii) a group of adjacent, contiguous, or geographically proximate units of local government that reach agreement to act jointly for purposes of this section and that represent a combined population of not less than 50,000.''.

SEC. 264. LOW INCOME COMMUNITY ENERGY EFFICIENCY PROGRAM.

(a) IN GENERAL.—The Secretary of Energy is authorized to make grants to private, nonprofit, mission-driven community development organizations including

1 community development corporations and community de-
2 velopment financial institutions to provide financing to
3 businesses and projects that improve energy efficiency;
4 identify and develop alternative, renewable, and distrib-
5 uted energy supplies; provide technical assistance and pro-
6 mote job and business opportunities for low-income resi-
7 dents; and increase energy conservation in low income
8 rural and urban communities.

9 (b) GRANTS.—The purpose of such grants is to in-
10 crease the flow of capital and benefits to low income com-
11 munities, minority-owned and woman-owned businesses
12 and entrepreneurs and other projects and activities located
13 in low income communities in order to reduce environ-
14 mental degradation, foster energy conservation and effi-
15 ciency and create job and business opportunities for local
16 residents. The Secretary may make grants on a competi-
17 tive basis for—

18 (1) investments that develop alternative, renew-
19 able, and distributed energy supplies;

20 (2) capitalizing loan funds that lend to energy
21 efficiency projects and energy conservation pro-
22 grams;

23 (3) technical assistance to plan, develop, and
24 manage an energy efficiency financing program; and

(4) technical and financial assistance to assist small-scale businesses and private entities develop new renewable and distributed sources of power or combined heat and power generation.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section there is authorized to be appropriated $50,000,000 for each of the fiscal years 2010 through 2015.

Subtitle G—Miscellaneous

SEC. 271. ENERGY EFFICIENT INFORMATION AND COMMUNICATIONS TECHNOLOGIES.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended to read as follows:

"SEC. 543. ENERGY EFFICIENT INFORMATION AND COMMUNICATIONS TECHNOLOGIES.

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of the American Clean Energy and Security Act of 2009, each Federal agency shall collaborate with the Director of the Office of Management and Budget (referred to in this section as the 'Director') to create an implementation strategy, including best practices and measurement and verification techniques, for the purchase and use of energy efficient information and communications technologies and practices. Wherever possible, existing standards, specifications, performance metrics, and

1 best management practices that have been or are being
2 developed in open collaboration and with broad stake-
3 holder input and review should be incorporated. In addi-
4 tion, agency strategies shall be flexible, cost-effective, and
5 based on the specific operating requirements and statutory
6 mission of each agency.

7 "(b) ENERGY EFFICIENT INFORMATION AND COM-
8 MUNICATIONS TECHNOLOGIES.—In developing an imple-
9 mentation strategy, each agency shall—

10 "(1) consider information and communications
11 technologies and infrastructure, including, but not
12 limited to, advanced metering infrastructure, infor-
13 mation and communications technology services and
14 products, efficient data center strategies, applica-
15 tions modernization and rationalization, building
16 systems energy efficiency, and telework; and

17 "(2) ensure that agencies are eligible to realize
18 the savings and rewards brought about through in-
19 creased efficiencies.

20 "(c) PERFORMANCE GOALS.—Not later than 6
21 months after the date of enactment of the American Clean
22 Energy and Security Act of 2009, the Director shall estab-
23 lish performance goals for evaluating the efforts of the
24 agencies in improving the maintenance, purchase and use
25 of energy efficiency of information and communications

technology systems. These performance goals should measure information technology costs over a specific time horizon (3 to 5 years), providing a complete picture of all costs, including energy.

"(d) REPORT.—Not later than 18 months after the date of enactment of the American Clean Energy and Security Act of 2009, and annually thereafter, the Director shall submit a report to Congress on—

"(1) the progress of each agency in reducing energy use through its implementation strategy; and

"(2) new and emerging technologies that would help achieve increased energy efficiency.".

SEC. 272. NATIONAL ENERGY EFFICIENCY GOALS.

(a) GOALS.—The energy efficiency goals of the United States are—

(1) to achieve an improvement in the overall energy productivity of the United States (measured in gross domestic product per unit of energy input) of at least 2.5 percent per year by the year 2012; and

(2) to maintain that annual rate of improvement each year through 2030.

(b) STRATEGIC PLAN.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy (referred to in this section as the "Sec-

retary''), in cooperation with the Administrator and the heads of other appropriate Federal agencies, shall develop a strategic plan to achieve the national goals for improvement in energy productivity established under subsection (a).

(2) PUBLIC INPUT AND COMMENT.—The Secretary shall develop the plan in a manner that provides appropriate opportunities for public input and comment.

(c) PLAN CONTENTS.—The strategic plan shall—

(1) identify future regulatory, funding, and policy priorities that would assist the United States in meeting the national goals;

(2) include energy savings estimates for each sector; and

(3) include data collection methodologies and compilations used to establish baseline and energy savings data.

(d) PLAN UPDATES.—

(1) IN GENERAL.—The Secretary shall—

(A) update the strategic plan biennially; and

(B) include the updated strategic plan in the national energy policy plan required by sec-

tion 801 of the Department of Energy Organization Act (42 U.S.C. 7321).

(2) CONTENTS.—In updating the plan, the Secretary shall—

(A) report on progress made toward implementing efficiency policies to achieve the national goals established under subsection (a); and

(B) verify, to the maximum extent practicable, energy savings resulting from the policies.

(e) REPORT TO CONGRESS AND THE PUBLIC.—The Secretary shall submit to Congress, and make available to the public, the initial strategic plan developed under subsection (b) and each updated plan.

SEC. 273. AFFILIATED ISLAND ENERGY INDEPENDENCE TEAM.

(a) DEFINITIONS.—In this section:

(1) AFFILIATED ISLAND.—The term ''affiliated island'' means—

(A) the Commonwealth of Puerto Rico;

(B) Guam;

(C) American Samoa;

(D) the Commonwealth of the Northern Mariana Islands;

(E) the Federated States of Micronesia;

(F) the Republic of the Marshall Islands;

(G) the Republic of Palau; and

(H) the United States Virgin Islands.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Energy (acting through the Assistant Secretary of Energy Efficiency and Renewable Energy), in consultation with the Secretary of the Interior and the Secretary of State.

(3) TEAM.—The term ''team'' means the team established by the Secretary under subsection (b).

(b) ESTABLISHMENT.—As soon as practicable after the date of enactment of this Act, the Secretary shall assemble a team of technical, policy, and financial experts to address the energy needs of each affiliated island—

(1) to reduce the reliance and expenditure of each affiliated island on imported fossil fuels;

(2) to increase the use by each affiliated island of indigenous, nonfossil fuel energy sources;

(3) to improve the performance of the energy infrastructure of the affiliated island through projects—

(A) to improve the energy efficiency of power generation, transmission, and distribution; and

(B) to increase consumer energy efficiency;

(4) to improve the performance of the energy infrastructure of each affiliated island through enhanced planning, education, and training;

(5) to adopt research-based and public-private partnership-based approaches as appropriate;

(6) to stimulate economic development and job creation; and

(7) to enhance the engagement by the Federal Government in international efforts to address island energy needs.

(c) DUTIES OF TEAM.—

(1) ENERGY ACTION PLANS.—

(A) IN GENERAL.—In accordance with subparagraph (B), the team shall provide technical, programmatic, and financial assistance to each utility of each affiliated island, and the government of each affiliated island, as appropriate, to develop and implement an energy Action Plan for each affiliated island to reduce the reliance of each affiliated island on imported fossil fuels through increased efficiency and use of indigenous clean-energy resources.

(B) REQUIREMENTS.—Each Action Plan described in subparagraph (A) for each affiliated island shall require and provide for—

(i) the conduct of 1 or more studies to assess opportunities to reduce fossil fuel use through—

(I) the improvement of the energy efficiency of the affiliated island; and

(II) the increased use by the affiliated island of indigenous clean-energy resources;

(ii) the identification and implementation of the most cost-effective strategies and projects to reduce the dependence of the affiliated island on fossil fuels;

(iii) the promotion of education and training activities to improve the capacity of the local utilities of the affiliated island, and the government of the affiliated island, as appropriate, to plan for, maintain, and operate the energy infrastructure of the affiliated island through the use of local or regional institutions, as appropriate;

(iv) the coordination of the activities described in clause (iii) to leverage the expertise and resources of international entities, the Department of Energy, the Department of the Interior, and the regional utilities of the affiliated island;

(v) the identification, and development, as appropriate, of research-based and private-public, partnership approaches to implement the Action Plan; and

(vi) any other component that the Secretary determines to be necessary to reduce successfully the use by each affiliated island of fossil fuels.

(2) REPORTS TO SECRETARY.—Not later than 1 year after the date on which the Secretary establishes the team and biennially thereafter, the team shall submit to the Secretary a report that contains a description of the progress of each affiliated island in—

(A) implementing the Action Plan of the affiliated island developed under paragraph (1)(A); and

(B) reducing the reliance of the affiliated island on fossil fuels.

(d) USE OF REGIONAL UTILITY ORGANIZATIONS.—To provide expertise to affiliated islands to assist the affiliated islands in meeting the purposes of this section, the Secretary shall consider—

(1) including regional utility organizations in the establishment of the team; and

(2) providing assistance through regional utility organizations.

(e) ANNUAL REPORTS TO CONGRESS.—Not later than 30 days after the date on which the Secretary receives a report submitted by the team under subsection (c)(2), the Secretary shall submit to the appropriate committees of Congress a report that contains a summary of the report of the team.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 274. PRODUCT CARBON DISCLOSURE PROGRAM.

(a) EPA STUDY.—The Administrator shall conduct a study to determine the feasibility of establishing a national program for measuring, reporting, publicly disclosing, and labeling products or materials sold in the United States for their carbon content, and shall, not later than 18 months after the date of enactment of this Act,

1 transmit a report to Congress which shall include the fol-
2 lowing:

3 (1) A determination of whether a national prod-
4 uct carbon disclosure program and labeling program
5 would be effective in achieving the intended goals of
6 achieving greenhouse gas reductions and an exam-
7 ination of existing programs globally and their
8 strengths and weaknesses.

9 (2) Criteria for identifying and prioritizing sec-
10 tors and products and processes that should be cov-
11 ered in such program or programs.

12 (3) An identification of products, processes, or
13 sectors whose inclusion could have a substantial car-
14 bon impact (prioritizing industrial products such as
15 iron and steel, aluminum, cement, chemicals, and
16 paper products, and also including food, beverage,
17 hygiene, cleaning, household cleaners, construction,
18 metals, clothing, semiconductor, and consumer elec-
19 tronics).

20 (4) Suggested methodology and protocols for
21 measuring the carbon content of the products across
22 the entire carbon lifecycle of such products for use
23 in a carbon disclosure program and labeling pro-
24 gram.

(5) A review of existing greenhouse gas product accounting standards, methodologies, and practices including the Greenhouse Gas Protocol, ISO 14040/44, ISO 14067, and Publically Available Specification 2050, and including a review of the strengths and weaknesses of each.

(6) A survey of secondary databases including the Manufacturing Energy Consumption Survey and evaluate the quality of data for use in a product carbon disclosure program and product carbon labeling program and an identification of gaps in the data relative to the potential purposes of a national product carbon disclosure program and product carbon labeling program and development of recommendations for addressing these data gaps.

(7) An assessment of the utility of comparing products and the appropriateness of product carbon standards.

(8) An evaluation of the information needed on a label for clear and accurate communication, including what pieces of quantitative and qualitative information needs to be disclosed.

(9) An evaluation of the appropriate boundaries of the carbon lifecycle analysis for different sectors and products.

(10) An analysis of whether default values should be developed for products whose producer does not participate in the program or does not have data to support a disclosure or label and determine best ways to develop such default values.

(11) A recommendation of certification and verification options necessary to assure the quality of the information and avoid greenwashing or the use of insubstantial or meaningless environmental claims to promote a product.

(12) An assessment of options for educating consumers about product carbon content and the product carbon disclosure program and product carbon labeling program.

(13) An analysis of the costs and timelines associated with establishing a national product carbon disclosure program and product carbon labeling program, including options for a phased approach. Costs should include those for businesses associated with the measurement of carbon footprints and those associated with creating a product carbon label and managing and operating a product carbon labeling program, and options for minimizing these costs.

(14) An evaluation of incentives (such as financial incentives, brand reputation, and brand loyalty)

to determine whether reductions in emissions can be accelerated through encouraging more efficient manufacturing or by encouraging preferences for lower-emissions products to substitute for higher-emissions products whose level of performance is no better.

(b) DEVELOPMENT OF NATIONAL CARBON DISCLOSURE PROGRAM.—Upon conclusion of the study, and not more than 36 months after the date of enactment of this Act, the Administrator shall establish a national product carbon disclosure program, participation in which shall be voluntary, and which may involve a product carbon label with broad applicability to the wholesale and consumer markets to enable and encourage knowledge about carbon content by producers and consumers and to inform efforts to reduce energy consumption (carbon dioxide equivalent emissions) nationwide. In developing such a program, the Administrator shall—

(1) consider the results of the study conducted under subsection (a);

(2) consider existing and planned programs and proposals and measurement standards (including the Publicly Available Specification 2050, standards to be developed by the World Resource Institute/World Business Council for Sustainable Development, the

International Standards Organization, and the bill AB19 pending in the California legislature);

(3) consider the compatibility of a national product carbon disclosure program with existing programs;

(4) utilize incentives and other means to spur the adoption of product carbon disclosure and product carbon labeling;

(5) develop protocols and parameters for a product carbon disclosure program, including a methodology and formula for assessing, verifying, and potentially labeling a product's greenhouse gas content, and for data quality requirements to allow for product comparison;

(6) create a means to—

(A) document best practices;

(B) ensure clarity and consistency;

(C) work with suppliers, manufacturers, and retailers to encourage participation;

(D) ensure that protocols are consistent and comparable across like products; and

(E) evaluate the effectiveness of the program;

(7) make publicly available information on product carbon content to ensure transparency;

(8) provide for public outreach, including a consumer education program to increase awareness;

(9) develop training and education programs to help businesses learn how to measure and communicate their carbon footprint and easy tools and templates for businesses to use to reduce cost and time to measure their products' carbon lifecycle;

(10) consult with the Secretary of Energy, the Secretary of Commerce, the Federal Trade Commission, and other Federal agencies, as necessary;

(11) gather input from stakeholders through consultations, public workshops or hearings with representatives of consumer product manufacturers, consumer groups, and environmental groups;

(12) utilize systems for verification and product certification that will ensure that claims manufacturers make about their products are valid;

(13) create a process for reviewing the accuracy of product carbon label information and protecting the product carbon label in the case of a change in the product's energy source, supply chain, ingredients, or other factors, and specify the frequency to which data should be updated; and

(14) develop a standardized, easily understandable carbon label, if appropriate, and create a proc-

ess for responding to inaccuracies and misuses of such a label.

(c) REPORT TO CONGRESS.—Not later than 5 years after the program is established pursuant to subsection (b), the Administrator shall report to Congress on the effectiveness and impact of the program, the level of voluntary participation, and any recommendations for additional measures.

(d) DEFINITIONS.—As used in this section—

(1) the term ''carbon content'' means the amount of greenhouse gas emissions and their warming impact on the atmosphere expressed in carbon dioxide equivalent associated with a product's value chain;

(2) the term ''carbon footprint'' means the level of greenhouse gas emissions produced by a particular activity, service, or entity; and

(3) the term ''carbon lifecycle'' means the greenhouse gas emissions that are released as part of the processes of creating, producing, processing or manufacturing, modifying, transporting, distributing, storing, using, recycling, or disposing of goods and services.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator

$5,000,000 for the study required by subsection (a) and $25,000,000 for each of fiscal years 2010 through 2025 for the program required under subsection (b).

TITLE III—REDUCING GLOBAL WARMING POLLUTION

SEC. 301. SHORT TITLE.

This title, and sections 112, 116, 221, 222, 223, and 401 of this Act, and the amendments made by this title and those sections, may be cited as the ''Safe Climate Act''.

Subtitle A—Reducing Global Warming Pollution

SEC. 311. REDUCING GLOBAL WARMING POLLUTION.

The Clean Air Act (42 U.S.C. and following) is amended by adding after title VI the following new title:

"TITLE VII—GLOBAL WARMING POLLUTION REDUCTION PROGRAM

"PART A—GLOBAL WARMING POLLUTION REDUCTION GOALS AND TARGETS

"SEC. 701. FINDINGS AND PURPOSE.

''(a) FINDINGS.—The Congress finds as follows:

''(1) Global warming poses a significant threat to the national security, economy, public health and

welfare, and environment of the United States, as well as of other nations.

"(2) Reviews of scientific studies, including by the Intergovernmental Panel on Climate Change and the National Academy of Sciences, demonstrate that global warming is the result of the combined anthropogenic greenhouse gas emissions from numerous sources of all types and sizes. Each increment of emission, when combined with other emissions, causes or contributes materially to the acceleration and extent of global warming and its adverse effects for the lifetime of such gas in the atmosphere. Accordingly, controlling emissions in small as well as large amounts is essential to prevent, slow the pace of, reduce the threats from, and mitigate global warming and its adverse effects.

"(3) Because they induce global warming, greenhouse gas emissions cause or contribute to injuries to persons in the United States, including—

"(A) adverse health effects such as disease and loss of life;

"(B) displacement of human populations;

"(C) damage to property and other interests related to ocean levels, acidification, and ice changes;

"(D) severe weather and seasonal changes;

"(E) disruption, costs, and losses to business, trade, employment, farms, subsistence, aesthetic enjoyment of the environment, recreation, culture, and tourism;

"(F) damage to plants, forests, lands, and waters;

"(G) harm to wildlife and habitat;

"(H) scarcity of water and the decreased abundance of other natural resources;

"(I) worsening of tropospheric air pollution;

"(J) substantial threats of similar damage; and

"(K) other harm.

"(4) That many of these effects and risks of future effects of global warming are widely shared does not minimize the adverse effects individual persons have suffered, will suffer, and are at risk of suffering because of global warming.

"(5) That some of the adverse and potentially catastrophic effects of global warming are at risk of occurring and not a certainty does not negate the harm persons suffer from actions that increase the

likelihood, extent, and severity of such future impacts.

"(6) Nations of the world look to the United States for leadership in addressing the threat of and harm from global warming. Full implementation of the Safe Climate Act is critical to engage other nations in an international effort to mitigate the threat of and harm from global warming.

"(7) Global warming and its adverse effects are occurring and are likely to continue and increase in magnitude, and to do so at a greater and more harmful rate, unless the Safe Climate Act is fully implemented and enforced in an expeditious manner.

"(b) PURPOSE.—It is the general purpose of the Safe Climate Act to help prevent, reduce the pace of, mitigate, and remedy global warming and its adverse effects. To fulfill such purpose, it is necessary to—

"(1) require the timely fulfillment of all governmental acts and duties, both substantive and procedural, and the prompt compliance of covered entities with the requirements of the Safe Climate Act;

"(2) establish and maintain an effective, transparent, and fair market for emission allowances and preserve the integrity of the cap on emissions and of offset credits;

1 ''(3) advance the production and deployment of
2 clean energy and energy efficiency technologies; and
3 ''(4) ensure effective enforcement of the Safe
4 Climate Act by citizens, States, Indian tribes, and
5 all levels of government because each violation of the
6 Safe Climate Act is likely to result in an additional
7 increment of greenhouse gas emission and will slow
8 the pace of implementation of the Safe Climate Act
9 and delay the achievement of the goals set forth in
10 section 702, and cause or contribute to global warm-
11 ing and its adverse effects.

12 **''SEC. 702. ECONOMY-WIDE REDUCTION GOALS.**

13 ''The goals of the Safe Climate Act are to reduce
14 steadily the quantity of United States greenhouse gas
15 emissions such that—
16 ''(1) in 2012, the quantity of United States
17 greenhouse gas emissions does not exceed 97 percent
18 of the quantity of United States greenhouse gas
19 emissions in 2005;
20 ''(2) in 2020, the quantity of United States
21 greenhouse gas emissions does not exceed 80 percent
22 of the quantity of United States greenhouse gas
23 emissions in 2005;
24 ''(3) in 2030, the quantity of United States
25 greenhouse gas emissions does not exceed 58 percent

of the quantity of United States greenhouse gas emissions in 2005; and

"(4) in 2050, the quantity of United States greenhouse gas emissions does not exceed 17 percent of the quantity of United States greenhouse gas emissions in 2005.

"SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.

"(a) IN GENERAL.—The regulations issued under section 721 shall cap and reduce annually the greenhouse gas emissions of capped sources each calendar year beginning in 2012 such that—

"(1) in 2012, the quantity of greenhouse gas emissions from capped sources does not exceed 97 percent of the quantity of greenhouse gas emissions from such sources in 2005;

"(2) in 2020, the quantity of greenhouse gas emissions from capped sources does not exceed 83 percent of the quantity of greenhouse gas emissions from such sources in 2005;

"(3) in 2030, the quantity of greenhouse gas emissions from capped sources does not exceed 58 percent of the quantity of greenhouse gas emissions from such sources in 2005; and

"(4) in 2050, the quantity of greenhouse gas emissions from capped sources does not exceed 17

1 percent of the quantity of greenhouse gas emissions
2 from such sources in 2005.

3 ''(b) DEFINITION.—For purposes of this section, the
4 term 'greenhouse gas emissions from such sources in
5 2005' means emissions to which section 722 would have
6 applied if the requirements of this title for the specified
7 year had been in effect for 2005.

8 **"SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.**

9 ''For the purposes of decreasing the likelihood of cat-
10 astrophic climate change, preserving tropical forests,
11 building capacity to generate offset credits, and facili-
12 tating international action on global warming, the Admin-
13 istrator shall set aside the percentage specified in section
14 781 of the quantity of emission allowances established
15 under section 721(a) for each year, to be used to achieve
16 a reduction of greenhouse gas emissions from deforest-
17 ation in developing countries in accordance with part E.
18 In 2020, activities supported under part E shall provide
19 greenhouse gas reductions in an amount equal to an addi-
20 tional 10 percentage points of reductions from United
21 States greenhouse gas emissions in 2005. The Adminis-
22 trator shall distribute these allowances with respect to ac-
23 tivities in countries that enter into and implement agree-
24 ments or arrangements relating to reduced deforestation
25 as described in section 754(a)(2).

"SEC. 705. REVIEW AND PROGRAM RECOMMENDATIONS.

"(a) IN GENERAL.—The Administrator shall, in consultation with appropriate Federal agencies, submit to Congress a report not later than July 1, 2013, and every 4 years thereafter, that includes—

"(1) an analysis of key findings based on the latest scientific information and data relevant to global climate change;

"(2) an analysis of capabilities to monitor and verify greenhouse gas reductions on a worldwide basis, including for the United States, as required under the Safe Climate Act; and

"(3) an analysis of the status of worldwide greenhouse gas reduction efforts, including implementation of the Safe Climate Act and other policies, both domestic and international, for reducing greenhouse gas emissions, preventing dangerous atmospheric concentrations of greenhouse gases, preventing significant irreversible consequences of climate change, and reducing vulnerability to the impacts of climate change.

"(b) EXCEPTION.—Paragraph (3) of subsection (a) shall not apply to the first report submitted under such subsection.

"(c) LATEST SCIENTIFIC INFORMATION.—The analysis required under subsection (a)(1) shall—

"(1) address existing scientific information and reports, considering, to the greatest extent possible, the most recent assessment report of the Intergovernmental Panel on Climate Change, reports by the United States Global Change Research Program, the Natural Resources Climate Change Adaptation Panel established under section 475 of the American Clean Energy and Security Act of 2009, and Federal agencies, and the European Union's global temperature data assessment; and

"(2) review trends and projections for—

"(A) global and country-specific annual emissions of greenhouse gases, and cumulative greenhouse gas emissions produced between 1850 and the present, including—

"(i) global cumulative emissions of anthropogenic greenhouse gases;

"(ii) global annual emissions of anthropogenic greenhouse gases; and

"(iii) by country, annual total, annual per capita, and cumulative anthropogenic emissions of greenhouse gases for the top 50 emitting nations;

"(B) significant changes, both globally and by region, in annual net non-anthropogenic

1 greenhouse gas emissions from natural sources,
2 including permafrost, forests, or oceans;
3 "(C) global atmospheric concentrations of
4 greenhouse gases, expressed in annual con-
5 centration units as well as carbon dioxide
6 equivalents based on 100-year global warming
7 potentials;
8 "(D) major climate forcing factors, such as
9 aerosols;
10 "(E) global average temperature, expressed
11 as seasonal and annual averages in land, ocean,
12 and land-plus-ocean averages; and
13 "(F) sea level rise;
14 "(3) assess the current and potential impacts of
15 global climate change on—
16 "(A) human populations, including impacts
17 on public health, economic livelihoods, subsist-
18 ence, human infrastructure, and displacement
19 or permanent relocation due to flooding, severe
20 weather, extended drought, erosion, or other
21 ecosystem changes;
22 "(B) freshwater systems, including water
23 resources for human consumption and agri-
24 culture and natural and managed ecosystems,
25 flood and drought risks, and relative humidity;

"(C) the carbon cycle, including impacts related to the thawing of permafrost, the frequency and intensity of wildfire, and terrestrial and ocean carbon sinks;

"(D) ecosystems and animal and plant populations, including impacts on species abundance, phenology, and distribution;

"(E) oceans and ocean ecosystems, including effects on sea level, ocean acidity, ocean temperatures, coral reefs, ocean circulation, fisheries, and other indicators of ocean ecosystem health;

"(F) the cryosphere, including effects on ice sheet mass balance, mountain glacier mass balance, and sea-ice extent and volume;

"(G) changes in the intensity, frequency, or distribution of severe weather events, including precipitation, tropical cyclones, tornadoes, and severe heat waves;

"(H) agriculture and forest systems; and

"(I) any other indicators the Administrator deems appropriate;

"(4) summarize any significant socio-economic impacts of climate change in the United States, including the territories of the United States, drawing

on work by Federal agencies and the academic literature, including impacts on—

"(A) public health;

"(B) economic livelihoods and subsistence;

"(C) displacement or permanent relocation due to flooding, severe weather, extended drought, erosion, or other ecosystem changes;

"(D) human infrastructure, including coastal infrastructure vulnerability to extreme events and sea level rise, river floodplain infrastructure, and sewer and water management systems;

"(E) agriculture and forests, including effects on potential growing season, distribution, and yield;

"(F) water resources for human consumption, agriculture and natural and managed ecosystems, flood and drought risks, and relative humidity;

"(G) energy supply and use; and

"(H) transportation;

"(5) in assessing risks and impacts, use a risk management framework, including both qualitative and quantitative measures, to assess the observed

and projected impacts of current and future climate change, accounting for—

"(A) both monetized and non-monetized losses;

"(B) potential nonlinear, abrupt, or essentially irreversible changes in the climate system;

"(C) potential nonlinear increases in the cost of impacts;

"(D) potential low-probability, high impact events; and

"(E) whether impacts are transitory or essentially permanent; and

"(6) based on the findings of the Administrator under this section, as well as assessments produced by the Intergovernmental Panel on Climate Change, the United States Global Change Research program, and other relevant scientific entities—

"(A) describe increased risks to natural systems and society that would result from an increase in global average temperature 3.6 degrees Fahrenheit (2 degrees Celsius) above the pre-industrial average or an increase in atmospheric greenhouse gas concentrations above 450 parts per million carbon dioxide equivalent; and

"(B) identify and assess—

"(i) significant residual risks not avoided by the thresholds described in subparagraph (A);

"(ii) alternative thresholds or targets that may more effectively limit the risks identified pursuant to clause (i); and

"(iii) thresholds above those described in subparagraph (A) which significantly increase the risk of certain impacts or render them essentially permanent.

"(d) STATUS OF MONITORING AND VERIFICATION CAPABILITIES TO EVALUATE GREENHOUSE GAS REDUCTION EFFORTS.—The analysis required under subsection (a)(2) shall evaluate the capabilities of the monitoring, reporting, and verification systems used to quantify progress in achieving reductions in greenhouse gas emissions both globally and in the United States (as described in section 702), including—

"(1) quantification of emissions and emission reductions by entities participating in the cap and trade program under this title;

"(2) quantification of emissions and emission reductions by entities participating in the offset program under this title;

"(3) quantification of emission and emissions reductions by entities regulated by performance standards;

"(4) quantification of aggregate net emissions and emissions reductions by the United States; and

"(5) quantification of global changes in net emissions and in sources and sinks of greenhouse gases.

"(e) STATUS OF GREENHOUSE GAS REDUCTION EFFORTS.—The analysis required under subsection (a)(3) shall address—

"(1) whether the programs under Safe Climate Act and other Federal statutes are resulting in sufficient United States greenhouse gas emissions reductions to meet the emissions reduction goals described in section 702, taking into account the use of offsets; and

"(2) whether United States actions, taking into account international actions, commitments, and trends, and considering the range of plausible emissions scenarios, are sufficient to avoid—

"(A) atmospheric greenhouse gas concentrations above 450 parts per million carbon dioxide equivalent;

"(B) global average surface temperature 3.6 degrees Fahrenheit (2 degrees Celsius) above the pre-industrial average, or such other temperature thresholds as the Administrator deems appropriate; and

"(C) other temperature or greenhouse gas thresholds identified pursuant to subsection (c)(6)(B).

"(f) RECOMMENDATIONS.—

"(1) LATEST SCIENTIFIC INFORMATION.—Based on the analysis described in subsection (a)(1), each report under subsection (a) shall identify actions that could be taken to—

"(A) improve the characterization of changes in the earth-climate system and impacts of global climate change;

"(B) better inform decision making and actions related to global climate change;

"(C) mitigate risks to natural and social systems; and

"(D) design policies to better account for climate risks.

"(2) MONITORING, REPORTING AND VERIFICATION.—Based on the analysis described in subsection (a)(2), each report under subsection (a)

shall identify key gaps in measurement, reporting, and verification capabilities and make recommendations to improve the accuracy and reliability of those capabilities.

"(3) STATUS OF GREENHOUSE GAS REDUCTION EFFORTS.—Based on the analysis described in subsection (a)(3), taking into account international actions, commitments, and trends, and considering the range of plausible emissions scenarios, each report under subsection (a) shall identify—

"(A) the quantity of additional reductions required to meet the emissions reduction goals in section 702;

"(B) the quantity of additional reductions in global greenhouse gas emissions needed to avoid the concentration and temperature thresholds identified in subsection (e); and

"(C) possible strategies and approaches for achieving additional reductions.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

"SEC. 706. NATIONAL ACADEMY REVIEW.

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall

offer to enter into a contract with the National Academy of Sciences (in this section referred to as the 'Academy') under which the Academy shall, not later than July 1, 2014, and every 4 years thereafter, submit to Congress and the Administrator a report that includes—

"(1) a review of the most recent report and recommendations issued under section 705; and

"(2) an analysis of technologies to achieve reductions in greenhouse gas emissions.

"(b) FAILURE TO ISSUE A REPORT.—In the event that the Administrator has not issued all or part of the most recent report required under section 705, the Academy shall conduct its own review and analysis of the required information.

"(c) TECHNOLOGICAL INFORMATION.—The analysis required under subsection (a)(2) shall—

"(1) review existing technological information and reports, including the most recent reports by the Department of Energy, the United States Global Change Research Program, the Intergovernmental Panel on Climate Change, and the International Energy Agency and any other relevant information on technologies or practices that reduce or limit greenhouse gas emissions;

"(2) include the participation of technical experts from relevant private industry sectors;

"(3) review the current and future projected deployment of technologies and practices in the United States that reduce or limit greenhouse gas emissions, including—

"(A) technologies for capture and sequestration of greenhouse gases;

"(B) technologies to improve energy efficiency;

"(C) low- or zero-greenhouse gas emitting energy technologies;

"(D) low- or zero-greenhouse gas emitting fuels;

"(E) biological sequestration practices and technologies; and

"(F) any other technologies the Academy deems relevant; and

"(4) review and compare the emissions reduction potential, commercial viability, market penetration, investment trends, and deployment of the technologies described in paragraph (3), including—

"(A) the need for additional research and development, including publicly funded research and development;

"(B) the extent of commercial deployment, including, where appropriate, a comparison to the cost and level of deployment of conventional fossil fuel-fired energy technologies and devices; and

"(C) an evaluation of any substantial technological, legal, or market-based barriers to commercial deployment.

"(d) RECOMMENDATIONS.—

"(1) LATEST SCIENTIFIC INFORMATION.—Based on the review described in subsection (a)(1), the Academy shall identify actions that could be taken to—

"(A) improve the characterization of changes in the earth-climate system and impacts of global climate change;

"(B) better inform decision making and actions related to global climate change;

"(C) mitigate risks to natural and social systems;

"(D) design policies to better account for climate risks; and

"(E) improve the accuracy and reliability of capabilities to monitor, report, and verify greenhouse gas emissions reduction efforts.

"(2) TECHNOLOGICAL INFORMATION.—Based on the analysis described in subsection (a)(2), the Academy shall identify—

"(A) additional emissions reductions that may be possible as a result of technologies described in the analysis;

"(B) barriers to the deployment of such technologies; and

"(C) actions that could be taken to speed deployment of such technologies.

"(3) STATUS OF GREENHOUSE GAS REDUCTION EFFORTS.—Based on the review described in subsection (a)(1), the Academy shall identify—

"(A) the quantity of additional reductions required to meet the emissions reduction goals described in section 702; and

"(B) the quantity of additional reductions in global greenhouse gas emissions needed to avoid the concentration and temperature thresholds described in section 705(c)(6)(A) or identified pursuant to section 705(c)(6)(B).

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

"SEC. 707. PRESIDENTIAL RESPONSE AND RECOMMENDATIONS.

"(a) AGENCY ACTIONS.—The President shall direct relevant Federal agencies to use existing statutory authority to take appropriate actions identified in the reports submitted under sections 705 and 706, and to address any shortfalls identified in such reports, not later than July 1, 2015, and every 4 years thereafter.

"(b) PLAN.—In the event that the Administrator or the National Academy of Sciences has concluded, in the most recent report submitted under section 705 or 706 respectively, that the United States will not achieve the necessary domestic greenhouse gas emissions reductions, or that global actions will not maintain safe global average surface temperature and atmospheric greenhouse gas concentration thresholds, the President shall, not later than July 1, 2015, and every 4 years thereafter, submit to Congress a plan identifying domestic and international actions that will achieve necessary additional greenhouse gas reductions, including any recommendations for legislative action.

"PART B—DESIGNATION AND REGISTRATION OF GREENHOUSE GASES

"SEC. 711. DESIGNATION OF GREENHOUSE GASES.

"(a) GREENHOUSE GASES.—For purposes of this title, the following are greenhouse gases:

"(1) Carbon dioxide.

"(2) Methane.

"(3) Nitrous oxide.

"(4) Sulfur hexafluoride.

"(5) Hydrofluorocarbons emitted from a chemical manufacturing process at an industrial stationary source.

"(6) Any perfluorocarbon.

"(7) Nitrogen trifluoride.

"(8) Any other anthropogenic gas designated as a greenhouse gas by the Administrator under this section.

"(b) DETERMINATION ON ADMINISTRATOR'S INITIATIVE.—The Administrator shall, by rule—

"(1) determine whether 1 metric ton of another anthropogenic gas makes the same or greater contribution to global warming over 100 years as 1 metric ton of carbon dioxide;

"(2) determine the carbon dioxide equivalent value for each gas with respect to which the Administrator makes an affirmative determination under paragraph (1);

"(3) for each gas with respect to which the Administrator makes an affirmative determination under paragraph (1) and that is used as a substitute

for a class I or class II substance under title VI, determine the extent to which to regulate that gas under section 619 and specify appropriate compliance obligations under section 619;

"(4) designate as a greenhouse gas for purposes of this title each gas for which the Administrator makes an affirmative determination under paragraph (1), to the extent that it is not regulated under section 619; and

"(5) specify the appropriate compliance obligations under this title for each gas designated as a greenhouse gas under paragraph (4).

"(c) PETITIONS TO DESIGNATE A GREENHOUSE GAS.—

"(1) IN GENERAL.—Any person may petition the Administrator to designate as a greenhouse gas any anthropogenic gas 1 metric ton of which makes the same or greater contribution to global warming over 100 years as 1 metric ton of carbon dioxide.

"(2) CONTENTS OF PETITION.—The petitioner shall provide sufficient data, as specified by rule by the Administrator, to demonstrate that the gas is likely to be designated as a greenhouse gas and is likely to be produced, imported, used, or emitted in the United States. To the extent practicable, the pe-

1 titioner shall also identify producers, importers, dis-
2 tributors, users, and emitters of the gas in the
3 United States.

4 "(3) REVIEW AND ACTION BY THE ADMINIS-
5 TRATOR.—Not later than 90 days after receipt of a
6 petition under paragraph (2), the Administrator
7 shall determine whether the petition is complete and
8 notify the petitioner and the public of the decision.

9 "(4) ADDITIONAL INFORMATION.—The Admin-
10 istrator may require producers, importers, distribu-
11 tors, users, or emitters of the gas to provide infor-
12 mation on the contribution of the gas to global
13 warming over 100 years compared to carbon dioxide.

14 "(5) TREATMENT OF PETITION.—For any sub-
15 stance used as a substitute for a class I or class II
16 substance under title VI, the Administrator may
17 elect to treat a petition under this subsection as a
18 petition to list the substance as a class II, group II
19 substance under section 619, and may require the
20 petition to be amended to address listing criteria
21 promulgated under that section.

22 "(6) DETERMINATION.—Not later than 2 years
23 after receipt of a complete petition, the Adminis-
24 trator shall, after notice and an opportunity for com-
25 ment—

"(A) issue and publish in the Federal Register—

"(i) a determination that 1 metric ton of the gas does not make a contribution to global warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide; and

"(ii) an explanation of the decision; or

"(B) determine that 1 metric ton of the gas makes a contribution to global warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide, and take the actions described in subsection (b) with respect to such gas.

"(7) GROUNDS FOR DENIAL.—The Administrator may not deny a petition under this subsection solely on the basis of inadequate Environmental Protection Agency resources or time for review.

"(d) SCIENCE ADVISORY BOARD CONSULTATION.—

"(1) CONSULTATION.—The Administrator shall—

"(A) give notice to the Science Advisory Board prior to making a determination under subsection (b)(1), (c)(6), or (e)(2)(B);

"(B) consider the written recommendations of the Science Advisory Board under paragraph (2) regarding the determination; and

"(C) consult with the Science Advisory Board regarding such determination, including consultation subsequent to receipt of such written recommendations.

"(2) FORMULATION OF RECOMMENDATIONS.—Upon receipt of notice under paragraph (1)(A) regarding a pending determination under subsection (b)(1), (c)(6), or (e)(2)(B), the Science Advisory Board shall—

"(A) formulate recommendations regarding such determination, subject to a peer review process; and

"(B) submit such recommendations in writing to the Administrator.

"(e) MANUFACTURING AND EMISSION NOTICES.—

"(1) NOTICE REQUIREMENT.—

"(A) IN GENERAL.—Effective 24 months after the date of enactment of this title, no person may manufacture or introduce into interstate commerce a fluorinated gas, or emit a significant quantity, as determined by the Administrator, of any fluorinated gas that is gen-

erated as a byproduct during the production or use of another fluorinated gas, unless—

"(i) the gas is designated as a greenhouse gas under this section or is an ozone-depleting substance listed as a class I or class II substance under title VI;

"(ii) the Administrator has determined that 1 metric ton of such gas does not make a contribution to global warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide; or

"(iii) the person manufacturing or importing the gas for distribution into interstate commerce, or emitting the gas, has submitted to the Administrator, at least 90 days before the start of such manufacture, introduction into commerce, or emission, a notice of such person's manufacture, introduction into commerce, or emission of such gas, and the Administrator has not determined that that notice or a substantially similar notice submitted by that person is incomplete.

"(B) ALTERNATIVE COMPLIANCE.—For a gas that is a substitute for a class I or class II substance under title VI and either has been listed as acceptable for use under section 612 or is currently subject to evaluation under section 612, the Administrator may accept the notice and information provided pursuant to that section as fulfilling the obligation under clause (iii) of subparagraph (A).

"(2) REVIEW AND ACTION BY THE ADMINISTRATOR.—

"(A) COMPLETENESS.—Not later than 90 days after receipt of notice under paragraph (1)(A)(iii) or (B), the Administrator shall determine whether the notice is complete.

"(B) DETERMINATION.— If the Administrator determines that the notice is complete, the Administrator shall, after notice and an opportunity for comment, not later than 12 months after receipt of the notice—

"(i) issue and publish in the Federal Register—

"(I) a determination that 1 metric ton of the gas does not make a contribution to global warming over

100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide; and

"(II) an explanation of the decision; or

"(ii) determine that 1 metric ton of the gas makes a contribution to global warming over 100 years that is equal to or greater than that made by 1 metric ton of carbon dioxide, and take the actions described in subsection (b) with respect to such gas.

"(f) REGULATIONS.—Not later than one year after the date of enactment of this title, the Administrator shall promulgate regulations to carry out this section. Such regulations shall include—

"(1) requirements for the contents of a petition submitted under subsection (c);

"(2) requirements for the contents of a notice required under subsection (e); and

"(3) methods and standards for evaluating the carbon dioxide equivalent value of a gas.

"(g) GASES REGULATED UNDER TITLE VI.—The Administrator shall not designate a gas as a greenhouse

gas under this section to the extent that the gas is regulated under title VI.

"(h) SAVINGS CLAUSE.—Nothing in this section shall be interpreted to relieve any person from complying with the requirements of section 612.

"SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF GREENHOUSE GASES.

"(a) MEASURE OF QUANTITY OF GREENHOUSE GASES.—Any provision of this title or title VIII that refers to a quantity or percentage of a quantity of greenhouse gases shall mean the quantity or percentage of the greenhouse gases expressed in carbon dioxide equivalents.

"(b) INITIAL VALUE.—Except as provided by the Administrator under this section or section 711—

"(1) the carbon dioxide equivalent value of greenhouse gases for purposes of this Act shall be as follows:

"CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED GREENHOUSE GASES

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
Carbon dioxide	1
Methane	25
Nitrous oxide	298
HFC-23	14,800
HFC-125	3,500
HFC-134a	1,430

"CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED GREENHOUSE GASES—Continued

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
HFC-143a	4,470
HFC-152a	124
HFC-227ea	3,220
HFC-236fa	9,810
HFC-4310mee	1,640
CF_4	7,390
C_2F_6	12,200
C_4F_{10}	8,860
C_6F_{14}	9,300
SF_6	22,800
NF_3	17,200

1 ; and

2 "(2) the carbon dioxide equivalent value for
3 purposes of this Act for any greenhouse gas not list-
4 ed in the table under paragraph (1) shall be the
5 100-year Global Warming Potentials provided in the
6 Intergovernmental Panel on Climate Change Fourth
7 Assessment Report.

8 "(c) PERIODIC REVIEW.—

9 "(1) Not later than February 1, 2017, and (ex-
10 cept as provided in paragraph (3)) not less than
11 every 5 years thereafter, the Administrator shall—

12 "(A) review and, if appropriate, revise the
13 carbon dioxide equivalent values established

under this section or section 711(b)(2), based on a determination of the number of metric tons of carbon dioxide that makes the same contribution to global warming over 100 years as 1 metric ton of each greenhouse gas; and

"(B) publish in the Federal Register the results of that review and any revisions.

"(2) A revised determination published in the Federal Register under paragraph (1)(B) shall take effect for greenhouse gas emissions starting on January 1 of the first calendar year starting at least 9 months after the date on which the revised determination was published.

"(3) The Administrator may decrease the frequency of review and revision under paragraph (1) if the Administrator determines that such decrease is appropriate in order to synchronize such review and revision with any similar review process carried out pursuant to the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992, or to an agreement negotiated under that convention, except that in no event shall the Administrator carry out such review and revision any less frequently than every 10 years.

"(d) METHODOLOGY.—In setting carbon dioxide equivalent values, for purposes of this section or section 711, the Administrator shall take into account publications by the Intergovernmental Panel on Climate Change or a successor organization under the auspices of the United Nations Environmental Programme and the World Meteorological Organization.

"SEC. 713. GREENHOUSE GAS REGISTRY.

"(a) DEFINITIONS.—For purposes of this section:

"(1) CLIMATE REGISTRY.—The term 'Climate Registry' means the greenhouse gas emissions registry jointly established and managed by more than 40 States and Indian tribes in 2007 to collect high-quality greenhouse gas emission data from facilities, corporations, and other organizations to support various greenhouse gas emission reporting and reduction policies for the member States and Indian tribes.

"(2) REPORTING ENTITY.—The term 'reporting entity' means—

"(A) a covered entity;

"(B) an entity that—

"(i) would be a covered entity if it had emitted, produced, imported, manufactured, or delivered in 2008 or any subse-

quent year more than the applicable threshold level in the definition of covered entity in paragraph (13) of section 700; and

"(ii) has emitted, produced, imported, manufactured, or delivered in 2008 or any subsequent year more than the applicable threshold level in the definition of covered entity in paragraph (13) of section 700, provided that the figure of 25,000 tons of carbon dioxide equivalent is read instead as 10,000 tons of carbon dioxide equivalent and the figure of 460,000,000 cubic feet is read instead as 184,000,000 cubic feet;

"(C) any other entity that emits a greenhouse gas, or produces, imports, manufactures, or delivers material whose use results or may result in greenhouse gas emissions if the Administrator determines that reporting under this section by such entity will help achieve the purposes of this title or title VIII;

"(D) any vehicle fleet with emissions of more than 25,000 tons of carbon dioxide equivalent on an annual basis, if the Administrator determines that the inclusion of such fleet will

1 help achieve the purposes of this title or title
2 VIII; or
3 "(E) any entity that delivers electricity to
4 a facility in an energy-intensive industrial sec-
5 tor that meets the energy or greenhouse gas in-
6 tensity criteria in section 764(b)(2)(A)(i).
7 "(b) REGULATIONS.—
8 "(1) IN GENERAL.—Not later than 6 months
9 after the date of enactment of this title, the Admin-
10 istrator shall issue regulations establishing a Federal
11 greenhouse gas registry. Such regulations shall—
12 "(A) require reporting entities to submit to
13 the Administrator data on—
14 "(i) greenhouse gas emissions in the
15 United States;
16 "(ii) the production and manufacture
17 in the United States, importation into the
18 United States, and, at the discretion of the
19 Administrator, exportation from the
20 United States, of fuels and industrial gases
21 the uses of which result or may result in
22 greenhouse gas emissions;
23 "(iii) deliveries in the United States of
24 natural gas, and any other gas meeting the
25 specifications for commingling with natural

gas for purposes of delivery, the combustion of which result or may result in greenhouse gas emissions; and

"(iv) the capture and sequestration of greenhouse gases;

"(B) require covered entities and, where appropriate, other reporting entities to submit to the Administrator data sufficient to ensure compliance with or implementation of the requirements of this title;

"(C) require reporting of electricity delivered to facilities in an energy-intensive industrial sector that meets the energy or greenhouse gas intensity criteria in section 764(b)(2)(A)(i);

"(D) ensure the completeness, consistency, transparency, accuracy, precision, and reliability of such data;

"(E) take into account the best practices from the most recent Federal, State, tribal, and international protocols for the measurement, accounting, reporting, and verification of greenhouse gas emissions, including protocols from the Climate Registry and other mandatory State or multistate authorized programs;

"(F) take into account the latest scientific research;

"(G) require that, for covered entities with respect to greenhouse gases to which section 722 applies, and, to the extent determined to be appropriate by the Administrator, for covered entities with respect to other greenhouse gases and for other reporting entities, submitted data are based on—

"(i) continuous monitoring systems for fuel flow or emissions, such as continuous emission monitoring systems;

"(ii) alternative systems that are demonstrated as providing data with the same precision, reliability, accessibility, and timeliness, or, to the extent the Administrator determines is appropriate for reporting small amounts of emissions, the same precision, reliability, and accessibility and similar timeliness, as data provided by continuous monitoring systems for fuel flow or emissions; or

"(iii) alternative methodologies that are demonstrated to provide data with precision, reliability, accessibility, and timeli-

ness, or, to the extent the Administrator determines is appropriate for reporting small amounts of emissions, precision, reliability, and accessibility, as similar as is technically feasible to that of data generally provided by continuous monitoring systems for fuel flow or emissions, if the Administrator determines that, with respect to a reporting entity, there is no continuous monitoring system or alternative system described in clause (i) or (ii) that is technically feasible;

''(H) require that the Administrator, in determining the extent to which the requirement to use systems or methodologies in accordance with subparagraph (G) is appropriate for reporting entities other than covered entities or for greenhouse gases to which section 722 does not apply, consider the cost of using such systems and methodologies, and of using other systems and methodologies that are available and suitable, for quantifying the emissions involved in light of the purposes of this title, including the goal of collecting consistent entity-wide data;

"(I) include methods for minimizing double reporting and avoiding irreconcilable double reporting of greenhouse gas emissions;

"(J) establish measurement protocols for carbon capture and sequestration systems, taking into consideration the regulations promulgated under section 813;

"(K) require that reporting entities provide the data required under this paragraph in reports submitted electronically to the Administrator, in such form and containing such information as may be required by the Administrator;

"(L) include requirements for keeping records supporting or related to, and protocols for auditing, submitted data;

"(M) establish consistent policies for calculating carbon content and greenhouse gas emissions for each type of fossil fuel with respect to which reporting is required;

"(N) subsequent to implementation of policies developed under subparagraph (M), provide for immediate dissemination, to States, Indian tribes, and on the Internet, of all data reported under this section as soon as practicable after

electronic audit by the Administrator and any resulting correction of data, except that data shall not be disseminated under this subparagraph if—

"(i) its nondissemination is vital to the national security of the United States, as determined by the President; or

"(ii) it is confidential business information that cannot be derived from information that is otherwise publicly available and that would cause significant calculable competitive harm if published, except that—

"(I) data relating to greenhouse gas emissions, including any upstream or verification data from reporting entities, shall not be considered to be confidential business information; and

"(II) data that is confidential business information shall be provided to a State or Indian tribe within whose jurisdiction the reporting entity is located, if the Administrator determines that such State or Indian tribe has in effect protections for confiden-

tial business information that are at least as protective as protections applicable to the Federal Government;

"(O) prescribe methods by which the Administrator shall, in cases in which satisfactory data are not submitted to the Administrator for any period of time, estimate emission, production, importation, manufacture, or delivery levels—

"(i) for covered entities with respect to greenhouse gas emissions, production, importation, manufacture, or delivery regulated under this title to ensure that emissions, production, importation, manufacture, or deliveries are not underreported, and to create a strong incentive for meeting data monitoring and reporting requirements—

"(I) with a conservative estimate of the highest emission, production, importation, manufacture, or delivery levels that may have occurred during the period for which data are missing; or

"(II) to the extent the Administrator considers appropriate, with an estimate of such levels assuming the unit is emitting, producing, importing, manufacturing, or delivering at a maximum potential level during the period, in order to ensure that such levels are not underreported and to create a strong incentive for meeting data monitoring and reporting requirements; and

"(ii) for covered entities with respect to greenhouse gas emissions to which section 722 does not apply and for other reporting entities, with a reasonable estimate of the emission, production, importation, manufacture, or delivery levels that may have occurred during the period for which data are missing;

"(P) require the designation of a designated representative for each reporting entity;

"(Q) require an appropriate certification, by the designated representative for the reporting entity, of accurate and complete accounting

of greenhouse gas emissions, as determined by the Administrator; and

"(R) include requirements for other data necessary for accurate and complete accounting of greenhouse gas emissions, as determined by the Administrator, including data for quality assurance of monitoring systems, monitors and other measurement devices, and other data needed to verify reported emissions, production, importation, manufacture, or delivery.

"(2) TIMING.—

"(A) CALENDAR YEARS 2007 THROUGH 2010.—For a base period of calendar years 2007 through 2010, each reporting entity shall submit annual data required under this section to the Administrator not later than March 31, 2011. The Administrator may waive or modify reporting requirements for calendar years 2007 through 2010 for categories of reporting entities to the extent that the Administrator determines that the reporting entities did not keep data or records necessary to meet reporting requirements. The Administrator may, in addition to or in lieu of such requirements, collect information on energy consumption and production.

"(B) SUBSEQUENT CALENDAR YEARS.—For calendar year 2011 and each subsequent calendar year, each reporting entity shall submit quarterly data required under this section to the Administrator not later than 60 days after the end of the applicable quarter, except when the data is already being reported to the Administrator on an earlier timeframe for another program.

"(3) WAIVER OF REPORTING REQUIREMENTS.—The Administrator may waive reporting requirements under this section for specific entities to the extent that the Administrator determines that sufficient and equally or more reliable verified and timely data are available to the Administrator and the public on the Internet under other mandatory statutory requirements.

"(4) ALTERNATIVE THRESHOLD.—The Administrator may, by rule, establish applicability thresholds for reporting under this section using alternative metrics and levels, provided that such metrics and levels are easier to administer and cover the same size and type of sources as the threshold defined in this section.

"(c) INTERRELATIONSHIP WITH OTHER SYSTEMS.—In developing the regulations issued under subsection (b), the Administrator shall take into account the work done by the Climate Registry and other mandatory State or multistate programs. Such regulations shall include an explanation of any major differences in approach between the system established under the regulations and such registries and programs.

"PART C—PROGRAM RULES

"SEC. 721. EMISSION ALLOWANCES.

"(a) IN GENERAL.—The Administrator shall establish a separate quantity of emission allowances for each calendar year starting in 2012, in the amounts prescribed under subsection (e).

"(b) IDENTIFICATION NUMBERS.—The Administrator shall assign to each emission allowance established under subsection (a) a unique identification number that includes the vintage year for that emission allowance.

"(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

"(1) IN GENERAL.—An allowance established by the Administrator under this title does not constitute a property right, nor does any credit or other instrument established or issued under the American Clean Energy and Security Act of 2009, and the

amendments made thereby, for the purpose of demonstrating compliance with this title.

"(2) TERMINATION OR LIMITATION.—Nothing in this Act or any other provision of law shall be construed to limit or alter the authority of the United States, including the Administrator acting pursuant to statutory authority, to terminate or limit allowances or offset credits.

"(3) OTHER PROVISIONS UNAFFECTED.—Except as otherwise specified in this Act, nothing in this Act relating to allowances or offset credits established or issued under this title shall affect the application of any other provision of law to a covered entity, or the responsibility for a covered entity to comply with any such provision of law.

"(d) SAVINGS PROVISION.—Nothing in this part shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges, or as affecting any State law regarding such State regulation, or as limiting State regulation (including any prudency review) under such a State law. Nothing in this part shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this part shall be construed to interfere with or impair any pro-

1 gram for competitive bidding for power supply in a State
2 in which such program is established.
3 "(e) ALLOWANCES FOR EACH CALENDAR YEAR.—
4 "(1) IN GENERAL.—Except as provided in para-
5 graph (2), the number of emission allowances estab-
6 lished by the Administrator under subsection (a) for
7 each calendar year shall be as provided in the fol-
8 lowing table:

"Calendar year	**Emission allowances (in millions)**
2012	4,627
2013	4,544
2014	5,099
2015	5,003
2016	5,482
2017	5,375
2018	5,269
2019	5,162
2020	5,056
2021	4,903
2022	4,751
2023	4,599
2024	4,446
2025	4,294
2026	4,142
2027	3,990
2028	3,837

"Calendar year	Emission allowances (in millions)
2029	3,685
2030	3,533
2031	3,408
2032	3,283
2033	3,158
2034	3,033
2035	2,908
2036	2,784
2037	2,659
2038	2,534
2039	2,409
2040	2,284
2041	2,159
2042	2,034
2043	1,910
2044	1,785
2045	1,660
2046	1,535
2047	1,410
2048	1,285
2049	1,160
2050 and each year thereafter	1,035

1 "(2) REVISION.—

2 "(A) IN GENERAL.—The Administrator
3 may adjust, in accordance with subparagraph
4 (B), the number of emission allowances estab-

lished pursuant to paragraph (1) if, after notice and an opportunity for public comment, the Administrator determines that—

"(i) United States greenhouse gas emissions in 2005 were other than 7,206 million metric tons carbon dioxide equivalent;

"(ii) if the requirements of this title for 2012 had been in effect in 2005, section 722 would have required emission allowances to be held for other than 66.2 percent of United States greenhouse gas emissions in 2005;

"(iii) if the requirements of this title for 2014 had been in effect in 2005, section 722 would have required emission allowances to be held for other than 75.7 percent of United States greenhouse gas emissions in 2005; or

"(iv) if the requirements of this title for 2016 had been in effect in 2005, section 722 would have required emission allowances to be held for other than 84.5 percent United States greenhouse gas emissions in 2005.

1 "(B) ADJUSTMENT FORMULA.—

2 "(i) IN GENERAL.—If the Adminis-
3 trator adjusts under this paragraph the
4 number of emission allowances established
5 pursuant to paragraph (1), the number of
6 emission allowances the Administrator es-
7 tablishes for any given calendar year shall
8 equal the product of—

9 "(I) United States greenhouse
10 gas emissions in 2005, expressed in
11 tons of carbon dioxide equivalent;

12 "(II) the percent of United
13 States greenhouse gas emissions in
14 2005, expressed in tons of carbon di-
15 oxide equivalent, that would have been
16 subject to section 722 if the require-
17 ments of this title for the given cal-
18 endar year had been in effect in 2005;
19 and

20 "(III) the percentage set forth
21 for that calendar year in section
22 703(a), or determined under clause
23 (ii) of this subparagraph.

24 "(ii) TARGETS.—In applying the por-
25 tion of the formula in clause (i)(III) of this

subparagraph, for calendar years for which a percentage is not listed in section 703(a), the Administrator shall use a uniform annual decline in the amount of emissions between the years that are specified.

"(iii) CARBON DIOXIDE EQUIVALENT VALUE.—If the Administrator adjusts under this paragraph the number of emission allowances established pursuant to paragraph (1), the Administrator shall use the carbon dioxide equivalent values established pursuant to section 712.

"(iv) LIMITATION ON ADJUSTMENT TIMING.—Once a calendar year has started, the Administrator may not adjust the number of emission allowances to be established for that calendar year.

"(C) LIMITATION ON ADJUSTMENT AUTHORITY.—The Administrator may adjust under this paragraph the number of emission allowances to be established pursuant to paragraph (1) only once.

"(f) COMPENSATORY ALLOWANCE.—

"(1) IN GENERAL.—The regulations promulgated under subsection (h) shall provide for the es-

tablishment and distribution of compensatory allowances for—

"(A) the destruction, in 2012 or later, of fluorinated gases that are greenhouse gases if—

"(i) allowances or offset credits were retired for their production or importation; and

"(ii) such gases are not required to be destroyed under any other provision of law;

"(B) the nonemissive use, in 2012 or later, of petroleum-based or coal-based liquid or gaseous fuel, petroleum coke, natural gas liquid, or natural gas as a feedstock, if allowances or offset credits were retired for the greenhouse gases that would have been emitted from their combustion; and

"(C) the conversionary use, in 2012 or later, of fluorinated gases in a manufacturing process, including semiconductor research or manufacturing, if allowances or offset credits were retired for the production or importation of such gas.

"(2) ESTABLISHMENT AND DISTRIBUTION.—

"(A) IN GENERAL.—Not later than 90 days after the end of each calendar year, the

Administrator shall establish and distribute to the entity taking the actions described in subparagraph (A), (B), or (C) of paragraph (1) a quantity of compensatory allowances equivalent to the number of tons of carbon dioxide equivalent of avoided emissions achieved through such actions. In establishing the quantity of compensatory allowances, the Administrator shall take into account the carbon dioxide equivalent value of any greenhouse gas resulting from such action.

"(B) SOURCE OF ALLOWANCES.—Compensatory allowances established under this subsection shall not be emission allowances established under subsection (a).

"(C) IDENTIFICATION NUMBERS.—The Administrator shall assign to each compensatory allowance established under subparagraph (A) a unique identification number.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'destruction' means the conversion of a greenhouse gas by thermal, chemical, or other means to another gas or set of

gases with little or no carbon dioxide equivalent value;

"(B) the term 'nonemissive use' means the use of fossil fuel as a feedstock in an industrial or manufacturing process to the extent that greenhouse gases are not emitted from such process, and to the extent that the products of such process are not intended for use as, or to be contained in, a fuel; and

"(C) the term 'conversionary use' means the conversion during research or manufacturing of a fluorinated gas into another greenhouse gas or set of gases with a lower carbon dioxide equivalent value.

"(4) FEEDSTOCK EMISSIONS STUDY.—

"(A) The Administrator may conduct a study to determine the extent to which petroleum-based or coal-based liquid or gaseous fuel, petroleum coke, natural gas liquid, or natural gas are used as feedstocks in manufacturing processes to produce products and the greenhouse gas emissions resulting from such uses.

"(B) If as a result of such a study, the Administrator determines that the use of such products by noncovered sources results in sub-

stantial emissions of greenhouse gases and that such emissions have not been adequately addressed under other requirements of this Act, the Administrator may, after notice and comment rulemaking, promulgate a regulation reducing compensatory allowances commensurately if doing so will not result in shifting such emissions to noncovered sources.

"(g) FLUORINATED GASES ASSESSMENT.—No later than March 31, 2014, the Administrator shall complete an assessment of the regulation of non-HFC fluorinated gases under this title to determine whether the most appropriate point of regulation is at the gas manufacturer or importer level, or at the source of emissions downstream. If the Administrator determines, based on consideration of environmental effectiveness, cost effectiveness, administrative feasibility, extent of coverage of emissions, competitiveness and other relevant considerations consistent with the purposes of this title, that emissions of non-HFC fluorinated gases can best be regulated by designating downstream emission sources as covered entities with compliance obligations under section 722, the Administrator shall, after notice and comment rulemaking, change the definition of covered entity and the compliance obligations under section 722 with respect to non-HFC

fluorinated gases accordingly, consistent with the purposes of this title, and establish such other requirements as are necessary to ensure compliance for such entities with the requirements of this title.

"(h) REGULATIONS.—Not later than 24 months after the date of enactment of this title, the Administrator shall promulgate regulations to carry out the provisions of this title.

"SEC. 722. PROHIBITION OF EXCESS EMISSIONS.

"(a) PROHIBITION.—Except as provided in subsection (c), effective January 1, 2012, each covered entity is prohibited from emitting greenhouse gases and having attributable greenhouse gas emissions, in combination, in excess of its allowable emissions level. A covered entity's allowable emissions level for each calendar year is the number of emission allowances (or credits or other allowances as provided in subsection (d)) it holds as of 12:01 a.m. on April 1 (or a later date established by the Administrator under subsection (j)) of the following calendar year.

"(b) METHODS OF DEMONSTRATING COMPLIANCE.—Except as otherwise provided in this section, the owner or operator of a covered entity shall not be considered to be in compliance with the prohibition in subsection (a) unless, as of 12:01 a.m. on April 1 (or a later date estab-

lished by the Administrator under subsection (j)) of each calendar year starting in 2013, the owner or operator holds a quantity of emission allowances (or credits or other allowances as provided in subsection (d)) at least as great as the quantity calculated as follows:

"(1) ELECTRICITY SOURCES.—For a covered entity described in section 700(13)(A), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that such covered entity emitted in the previous calendar year, excluding emissions resulting from the combustion of—

"(A) petroleum-based or coal-based liquid fuel;

"(B) natural gas liquid;

"(C) renewable biomass or gas derived from renewable biomass; or

"(D) petroleum coke or gas derived from petroleum coke.

"(2) FUEL PRODUCERS AND IMPORTERS.—For a covered entity described in section 700(13)(B), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that would be emitted from the combustion of any petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid, produced or imported by such covered entity

during the previous calendar year for sale or distribution in interstate commerce, assuming no capture and sequestration of any greenhouse gas emissions.

"(3) INDUSTRIAL GAS PRODUCERS AND IMPORTERS.—For a covered entity described in section 700(13)(C), 1 emission allowance for each ton of carbon dioxide equivalent of fossil fuel-based carbon dioxide, nitrous oxide, or any other fluorinated gas that is a greenhouse gas (except for nitrogen trifluoride), or any combination thereof, produced or imported by such covered entity during the previous calendar year for sale or distribution in interstate commerce.

"(4) NITROGEN TRIFLUORIDE SOURCES.—For a covered entity described in section 700(13)(D), 1 emission allowance for each ton of carbon dioxide equivalent of nitrogen trifluoride that such covered entity emitted in the previous calendar year.

"(5) GEOLOGICAL SEQUESTRATION SITES.—For a covered entity described in section 700(13)(E), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that such covered entity emitted in the previous calendar year.

"(6) INDUSTRIAL STATIONARY SOURCES.—For a covered entity described in section 700(13)(F), (G), or (H), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that such covered entity emitted in the previous calendar year, excluding emissions resulting from—

"(A) the combustion of petroleum-based or coal-based liquid fuel;

"(B) the combustion of natural gas liquid;

"(C) the combustion of renewable biomass or gas derived from renewable biomass;

"(D) the combustion of petroleum coke or gas derived from petroleum coke; or

"(E) the use of any fluorinated gas that is a greenhouse gas purchased for use at that covered entity, except for nitrogen trifluoride.

"(7) INDUSTRIAL FOSSIL FUEL-FIRED COMBUSTION DEVICES.—For a covered entity described in section 700(13)(I), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that the devices emitted in the previous calendar year, excluding emissions resulting from the combustion of—

"(A) petroleum-based or coal-based liquid fuel;

"(B) natural gas liquid;

"(C) renewable biomass or gas derived from renewable biomass; or

"(D) petroleum coke or gas derived from petroleum coke.

"(8) NATURAL GAS LOCAL DISTRIBUTION COMPANIES.—For a covered entity described in section 700(13)(J), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that would be emitted from the combustion of the natural gas, and any other gas meeting the specifications for commingling with natural gas for purposes of delivery, that such entity delivered during the previous calendar year to customers that are not covered entities, assuming no capture and sequestration of that greenhouse gas.

"(9) ALGAE-BASED FUELS.—Where carbon dioxide (or another greenhouse gas) generated by a covered entity is used as an input in the production of algae-based fuels, the Administrator shall ensure that emission allowances are required to be held either for the carbon dioxide generated by a covered entity that is used to grow the algae or for the portion of the carbon dioxide emitted from combustion of the fuel produced from such algae that is attrib-

1 utable to carbon dioxide generated by a covered enti-
2 ty, but not for both.

3 "(10) FUGITIVE EMISSIONS.—The greenhouse
4 gas emissions to which paragraphs (1), (4), (6), and
5 (7) apply shall not include fugitive emissions of
6 greenhouse gas, except to the extent the Adminis-
7 trator determines that data on the carbon dioxide
8 equivalent value of greenhouse gas in the fugitive
9 emissions can be provided with sufficient precision,
10 reliability, accessibility, and timeliness to ensure the
11 integrity of emission allowances, the allowance track-
12 ing system, and the cap on emissions.

13 "(11) EXPORT EXEMPTION.—This section shall
14 not apply to any petroleum-based or coal-based liq-
15 uid fuel, petroleum coke, natural gas liquid, fossil
16 fuel-based carbon dioxide, nitrous oxide, or
17 fluorinated gas that is exported for sale or use.

18 "(12) NATURAL GAS LIQUIDS.—For natural gas
19 liquids, the covered entity subject to the requirement
20 stated in paragraph (2) shall be the owner of the
21 natural gas liquids at the point the natural gas liq-
22 uids are separated into merchantable products.

23 "(13) APPLICATION OF MULTIPLE PARA-
24 GRAPHS.—For a covered entity to which more than
25 1 of paragraphs (1) through (8) apply, all applicable

paragraphs shall apply, except that not more than 1 emission allowance shall be required for the same emission.

"(14) APPLICATION TO FRACTIONS OF TONS.—In applying paragraphs (1) through (8), any amount less than 1 ton of carbon dioxide equivalent of emissions or attributable greenhouse gas emissions shall be treated as 1 ton of such carbon dioxide equivalent.

"(c) PHASE-IN OF PROHIBITION.—

"(1) INDUSTRIAL STATIONARY SOURCES.—The prohibition under subsection (a) shall first apply to a covered entity described in section 700(13)(D), (F), (G), (H), or (I), with respect to emissions occurring during calendar year 2014.

"(2) NATURAL GAS LOCAL DISTRIBUTION COMPANIES.—The prohibition under subsection (a) shall first apply to a covered entity described in section 700(13)(J) with respect to deliveries occurring during calendar year 2016.

"(d) ADDITIONAL METHODS.—In addition to using the method of compliance described in subsection (b), a covered entity may do the following:

"(1) OFFSET CREDITS.—

"(A) IN GENERAL.—Covered entities collectively may, in accordance with this paragraph, use offset credits to demonstrate compliance for up to a maximum of 2 billion tons of greenhouse gas emissions annually. The ability to demonstrate compliance with offset credits shall be divided pro rata among covered entities by allowing each covered entity to satisfy a percentage of the number of allowances required to be held under subsection (b) to demonstrate compliance by holding 1 domestic offset credit or 1.25 international offset credits in lieu of an emission allowance, except as provided in subparagraph (D).

"(B) APPLICABLE PERCENTAGE.—The percentage referred to in subparagraph (A) for a given calendar year shall be determined by dividing 2 billion by the sum of 2 billion plus the number of emission allowances established under section 721(a) for the previous year, and multiplying that number by 100. Not more than one half of the applicable percentage under this paragraph may be used by holding domestic offset credits, and not more than one half of the applicable percentage under this paragraph may

be used by holding international offset credits, except as provided in subparagraph (C).

"(C) MODIFIED PERCENTAGES.—If the Administrator determines that domestic offset credits available for use in demonstrating compliance in any calendar year at domestic offset prices generally equal to or less than emission allowance prices, are likely to offset less than 0.9 billion tons of greenhouse gas emissions (measured in tons of carbon dioxide equivalents), for purposes of compliance demonstration in that year the Administrator shall—

"(i) increase the percentage of emissions that can be offset through the use of international offset credits to reflect the amount that 1.0 billion exceeds the number of domestic offset credits the Administrator determines is available, at prices generally equal to or less than emission allowance prices, for that year, up to a maximum of 0.5 billion tons of greenhouse gas emissions; and

"(ii) decrease the percentage of emissions that can be offset through the use of

domestic offset credits by the same amount.

"(D) INTERNATIONAL OFFSET CREDITS.—Notwithstanding subparagraph (A), to demonstrate compliance prior to calendar year 2018, a covered entity may use 1 international offset credit in lieu of an emission allowance up to the amount permitted under this paragraph.

"(E) PRESIDENT'S RECOMMENDATION.—The President may make a recommendation to Congress as to whether the number 2 billion specified in subparagraphs (A) and (B) should be increased or decreased.

"(2) INTERNATIONAL EMISSION ALLOWANCES.—To demonstrate compliance, a covered entity may hold an international emission allowance in lieu of an emission allowance, except as modified under section 728(d).

"(3) COMPENSATORY ALLOWANCES.—To demonstrate compliance, a covered entity may hold a compensatory allowance obtained under section 721(f) in lieu of an emission allowance.

"(e) RETIREMENT OF ALLOWANCES AND CREDITS.—As soon as practicable after a deadline established for covered entities to demonstrate compliance with this title, the

Administrator shall retire the quantity of allowances or credits required to be held under this title.

"(f) ALTERNATIVE METRICS.—For categories of covered entities described in subparagraph (B), (C), (D), (G), (H), or (I) of section 700(13), the Administrator may, by rule, establish an applicability threshold for inclusion under those subparagraphs using an alternative metric and level, provided that such metric and level are easier to administer and cover the same size and type of sources as the threshold defined in such subparagraphs.

"(g) THRESHOLD REVIEW.—For each category of covered entities described in subparagraph (B), (C), (D), (G), (H), or (I) of section 700(13), the Administrator shall, in 2020 and once every 8 years thereafter, review the carbon dioxide equivalent emission threshold that is used to define covered entities in such category. After consideration of—

"(1) emissions from covered entities in such category, and from other entities of the same type that emit less than the threshold amount for the category (including emission sources that commence operation after the date of enactment of this title that are not covered entities); and

"(2) whether greater greenhouse gas emission reductions can be cost-effectively achieved by lowering the applicable threshold,

the Administrator may by rule lower such threshold to not less than 10,000 tons of carbon dioxide equivalent emissions. In determining the cost effectiveness of potential reductions from lowering the threshold for covered entities, the Administrator shall consider alternative regulatory greenhouse gas programs, including setting standards under other titles of this Act.

"(h) DESIGNATED REPRESENTATIVES.—The regulations promulgated under section 721(h) shall require that each covered entity, and each entity holding allowances or offset credits or receiving allowances or offset credits from the Administrator under this title, submit to the Administrator a certificate of representation designating a designated representative.

"(i) EDUCATION AND OUTREACH.—

"(1) IN GENERAL.—The Administrator shall establish and carry out a program of education and outreach to assist covered entities, especially entities having little experience with environmental regulatory requirements similar or comparable to those under this title, in preparing to meet the compliance obligations of this title. Such program shall include

education with respect to using markets to effectively achieve such compliance.

"(2) FAILURE TO RECEIVE INFORMATION.—A failure to receive information or assistance under this subsection may not be used as a defense against an allegation of any violation of this title.

"(j) ADJUSTMENT OF DEADLINE.—The Administrator may, by rule, establish a deadline for demonstrating compliance, for a calendar year, later than the date provided in subsection (a), as necessary to ensure the availability of emissions data, but in no event shall the deadline be later than June 1.

"(k) NOTICE REQUIREMENT FOR COVERED ENTITIES RECEIVING NATURAL GAS FROM NATURAL GAS LOCAL DISTRIBUTION COMPANIES.—The owner or operator of a covered entity that takes delivery of natural gas from a natural gas local distribution company shall, not later than September 1 of each calendar year, notify such natural gas local distribution company in writing that such entity will qualify as a covered entity under this title for that calendar year.

"(l) COMPLIANCE OBLIGATION.—For purposes of this title, the year of a compliance obligation is the year in which compliance is determined, not the year in which

the greenhouse gas emissions occur or the covered entity has attributable greenhouse gas emissions.

"SEC. 723. PENALTY FOR NONCOMPLIANCE.

"(a) ENFORCEMENT.—A violation of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. It shall be a violation of this Act for a covered entity to emit greenhouse gases and have attributable greenhouse gas emissions, in combination, in excess of its allowable emissions level as provided in section 722(a). Each ton of carbon dioxide equivalent for which a covered entity fails to demonstrate compliance under section 722 shall be a separate violation.

"(b) EXCESS EMISSIONS PENALTY.—

"(1) IN GENERAL.—The owner or operator of any covered entity that fails for any year to comply, on the deadline described in section 722(a) or (j), shall be liable for payment to the Administrator of an excess emissions penalty in the amount described in paragraph (2).

"(2) AMOUNT.—The amount of an excess emissions penalty required to be paid under paragraph (1) shall be equal to the product obtained by multiplying—

"(A) the tons of carbon dioxide equivalent of greenhouse gas emissions or attributable

greenhouse gas emissions for which the owner or operator of a covered entity failed to demonstrate compliance under section 722 on the deadline; by

"(B) twice the auction clearing price for the earliest vintage year emission allowances in the last auction carried out pursuant to section 791 before such deadline.

"(3) TIMING.—An excess emissions penalty required under this subsection shall be immediately due and payable to the Administrator, without demand, in accordance with regulations promulgated by the Administrator, which shall be issued not later than 2 years after the date of enactment of this title.

"(4) NO EFFECT ON LIABILITY.—An excess emissions penalty due and payable by the owners or operators of a covered entity under this subsection shall not diminish the liability of the owners or operators for any fine, penalty, or assessment against the owners or operators for the same violation under any other provision of this Act or any other law.

"(c) EXCESS EMISSIONS ALLOWANCES.—The owner or operator of a covered entity that fails for any year to comply on the deadline described in section 722(a) or (j)

shall be liable to offset the covered entity's excess combination of greenhouse gases emitted and attributable greenhouse gas emissions by an equal quantity of emission allowances during the following calendar year, or such longer period as the Administrator may prescribe. During the year in which the covered entity failed to comply, or any year thereafter, the Administrator may deduct the emission allowances required under this subsection to offset the covered entity's excess greenhouse gas emissions or attributable greenhouse gas emissions.

"SEC. 724. TRADING.

''(a) PERMITTED TRANSACTIONS.—Except as otherwise provided in this title, the lawful holder of an emission allowance, compensatory allowance, or offset credit may, without restriction, sell, exchange, transfer, hold for compliance in accordance with section 722, or request that the Administrator retire the emission allowance, compensatory allowance, or offset credit.

''(b) NO RESTRICTION ON TRANSACTIONS.—The privilege of purchasing, holding, selling, exchanging, transferring, and requesting retirement of emission allowances, compensatory allowances, or offset credits shall not be restricted to the owners and operators of covered entities, except as otherwise provided in this title.

"(c) EFFECTIVENESS OF ALLOWANCE TRANSFERS.—No transfer of an allowance or offset credit shall be effective for purposes of this title until a certification of the transfer, signed by the designated representative of the transferor, is received and recorded by the Administrator in accordance with regulations promulgated under section 721(h).

"(d) ALLOWANCE TRACKING SYSTEM.—The regulations promulgated under section 721(h) shall include a system for issuing, recording, holding, and tracking allowances and offset credits that shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance and offset credit markets. Such regulations shall provide for appropriate publication of the information in the system on the Internet.

"SEC. 725. BANKING AND BORROWING.

"(a) BANKING.—An emission allowance may be used to comply with section 722 or section 723 for emissions in—

"(1) the vintage year for the allowance; or

"(2) any calendar year subsequent to the vintage year for the allowance.

"(b) EXPIRATION.—

"(1) REGULATIONS.—The Administrator may establish by regulation criteria and procedures for

determining whether, and for implementing a determination that, the expiration of an allowance or offset credit established or issued by the Administrator under this title, or expiration of the ability to use an international emission allowance to comply with section 722, is necessary to ensure the authenticity and integrity of allowances or offset credits or the allowance tracking system.

"(2) GENERAL RULE.—An allowance or offset credit established or issued by the Administrator under this title shall not expire unless—

"(A) it is retired by the Administrator pursuant to this title; or

"(B) it is determined to expire or to have expired by a specific date by the Administrator in accordance with regulations promulgated under paragraph (1).

"(3) INTERNATIONAL EMISSION ALLOWANCES.—The ability to use an international emission allowance to comply with section 722 shall not expire unless—

"(A) the allowance is retired by the Administrator pursuant to this title; or

"(B) the ability to use such allowance to meet such compliance obligation requirements is

determined to expire or to have expired by a specific date by the Administrator in accordance with regulations promulgated under paragraph (1).

"(c) BORROWING FUTURE VINTAGE YEAR ALLOWANCES.—

"(1) BORROWING WITHOUT INTEREST.—In addition to the uses described in subsection (a), an emission allowance may be used to demonstrate compliance under section 722 or comply with section 723 for emissions, production, importation, manufacture, or deliveries in the calendar year immediately preceding the vintage year for the allowance.

"(2) BORROWING WITH INTEREST.—

"(A) IN GENERAL.—A covered entity may demonstrate compliance under section 722 in a specific calendar year for up to 15 percent of its emissions by holding emission allowances with a vintage year 1 to 5 years later than that calendar year.

"(B) LIMITATIONS.—An emission allowance borrowed pursuant to this paragraph shall be an emission allowance that is established by the Administrator for a specific future calendar

year under section 721(a) and that is held by the borrower.

"(C) PREPAYMENT OF INTEREST.—For each emission allowance that an owner or operator of a covered entity borrows pursuant to this paragraph, such owner or operator shall, at the time it borrows the allowance, hold for retirement by the Administrator, and the Administrator shall retire, a quantity of emission allowances that is equal to the product obtained by multiplying—

"(i) 0.08; by

"(ii) the number of years between the calendar year in which the allowance is being used to satisfy a compliance obligation and the vintage year of the allowance.

"SEC. 726. STRATEGIC RESERVE.

"(a) STRATEGIC RESERVE AUCTIONS.—

"(1) IN GENERAL.—Once each quarter of each calendar year for which allowances are established under section 721(a), the Administrator shall auction strategic reserve allowances.

"(2) RESTRICTION TO COVERED ENTITIES.—In each auction conducted under paragraph (1), only covered entities that the Administrator expects will

be required to comply with section 722 in the following calendar year shall be eligible to make purchases.

"(b) POOL OF EMISSION ALLOWANCES FOR STRATEGIC RESERVE AUCTIONS.—

"(1) FILLING THE STRATEGIC RESERVE INITIALLY.—

"(A) IN GENERAL.—The Administrator shall, not later than 2 years after the date of enactment of this title, establish a strategic reserve account, and shall place in that account an amount of emission allowances established under section 721(a) for each calendar year from 2012 through 2050 in the amounts specified in subparagraph (B) of this paragraph.

"(B) AMOUNT.—The amount referred to in subparagraph (A) shall be—

"(i) for each of calendar years 2012 through 2019, 1 percent of the quantity of emission allowances established for that year pursuant to section 721(e)(1);

"(ii) for each of calendar years 2020 through 2029, 2 percent of the quantity of emission allowances established for that year pursuant to section 721(e)(1); and

"(iii) for each of calendar years 2030 through 2050, 3 percent of the quantity of emission allowances established for that year pursuant to section 721(e)(1).

"(C) EFFECT ON OTHER PROVISIONS.—Any provision in this title (except for subparagraph (B) of this paragraph) that refers to a quantity or percentage of the emission allowances established for a calendar year under section 721(a) shall be considered to refer to the amount of emission allowances as determined pursuant to section 721(e), less any emission allowances established for that year that are placed in the strategic reserve account under this paragraph.

"(2) SUPPLEMENTING THE STRATEGIC RESERVE.—The Administrator shall also—

"(A) at the end of each calendar year, transfer to the strategic reserve account each emission allowance that was offered for sale but not sold at any auction conducted under section 791; and

"(B) deposit emission allowances established under subsection (g) from auction proceeds into the strategic reserve, to the extent

1 necessary to maintain the reserve at its original
2 size.
3 "(c) MINIMUM STRATEGIC RESERVE AUCTION
4 PRICE.—
5 "(1) IN GENERAL.—At each strategic reserve
6 auction, the Administrator shall offer emission al-
7 lowances for sale beginning at a minimum price per
8 emission allowance, which shall be known as the
9 'minimum strategic reserve auction price'.
10 "(2) INITIAL MINIMUM STRATEGIC RESERVE
11 AUCTION PRICES.—The minimum strategic reserve
12 auction price shall be $28 (in constant 2009 dollars)
13 for the strategic reserve auctions held in 2012. For
14 the strategic reserve auctions held in 2013 and
15 2014, the minimum strategic reserve auction price
16 shall be the strategic reserve auction price for the
17 previous year increased by 5 percent plus the rate of
18 inflation (as measured by the Consumer Price Index
19 for All Urban Consumers).
20 "(3) MINIMUM STRATEGIC RESERVE AUCTION
21 PRICE IN SUBSEQUENT YEARS.—For each strategic
22 reserve auction held in 2015 and each year there-
23 after, the minimum strategic reserve auction price
24 shall be 60 percent above a rolling 36-month average
25 of the daily closing price for that year's emission al-

lowance vintage as reported on registered carbon trading facilities, calculated using constant dollars.

"(d) QUANTITY OF EMISSION ALLOWANCES RELEASED FROM THE STRATEGIC RESERVE.—

"(1) INITIAL LIMITS.—For each of calendar years 2012 through 2016, the annual limit on the number of emission allowances from the strategic reserve account that may be auctioned is an amount equal to 5 percent of the emission allowances established for that calendar year under section 721(a). This limit does not apply to international offset credits sold on consignment pursuant to subsection (h).

"(2) LIMITS IN SUBSEQUENT YEARS.—For calendar year 2017 and each year thereafter, the annual limit on the number of emission allowances from the strategic reserve account that may be auctioned is an amount equal to 10 percent of the emission allowances established for that calendar year under section 721(a). This limit does not apply to international offset credits sold on consignment pursuant to subsection (h).

"(3) ALLOCATION OF LIMITATION.—One-fourth of each year's annual strategic reserve auction limit under this subsection shall be made available for

1 auction in each quarter. Any allowances from the
2 strategic reserve account that are made available for
3 sale in a quarterly auction and not sold shall be
4 rolled over and added to the quantity available for
5 sale in the following quarter, except that allowances
6 not sold at auction in the fourth quarter of a year
7 shall not be rolled over to the following calendar
8 year's auctions, but shall be returned to the stra-
9 tegic reserve account.

10 ''(e) PURCHASE LIMIT.—

11 ''(1) IN GENERAL.—Except as provided in para-
12 graph (2) or (3), the annual number of emission al-
13 lowances that a covered entity may purchase at the
14 strategic reserve auctions in each calendar year shall
15 not exceed 20 percent of the covered entity's com-
16 bined greenhouse gas emissions and attributable
17 greenhouse gas emissions during the most recent
18 year for which allowances or offset credits were re-
19 tired under section 722.

20 ''(2) 2012 LIMIT.—For calendar year 2012, the
21 maximum aggregate number of emission allowances
22 that a covered entity may purchase from that year's
23 strategic reserve auctions shall be 20 percent of the
24 covered entity's combined greenhouse gas emissions
25 and attributable greenhouse gas emissions that the

1 covered entity reported to the registry established
2 under section 713 for 2011 and that would be sub-
3 ject to section 722(a) if occurring in later calendar
4 years.

5 "(3) NEW ENTRANTS.—The Administrator
6 shall, by regulation, establish a separate purchase
7 limit applicable to entities that expect to become a
8 covered entity in the year of the auction, permitting
9 them to purchase emission allowances at the stra-
10 tegic reserve auctions in their first calendar year of
11 operation in an amount of at least 20 percent of
12 their expected combined greenhouse gas emissions
13 and attributable greenhouse gas emissions for that
14 year.

15 "(f) DELEGATION OR CONTRACT.—Pursuant to regu-
16 lations under this section, the Administrator may, by dele-
17 gation or contract, provide for the conduct of strategic re-
18 serve auctions under the Administrator's supervision by
19 other departments or agencies of the Federal Government
20 or by nongovernmental agencies, groups, or organizations.

21 "(g) USE OF AUCTION PROCEEDS.—

22 "(1) DEPOSIT IN STRATEGIC RESERVE FUND.—
23 The proceeds from strategic reserve auctions shall be
24 placed in the Strategic Reserve Fund established
25 under section 793(1), and shall be available without

further appropriation or fiscal year limitation for the purposes described in this subsection.

"(2) INTERNATIONAL OFFSET CREDITS FOR REDUCED DEFORESTATION.—The Administrator shall use the proceeds from each strategic reserve auction to purchase international offset credits issued for reduced deforestation activities pursuant to section 743(e). The Administrator shall retire those international offset credits and establish a number of emission allowances equal to 80 percent of the number of international offset credits so retired. Emission allowances established under this paragraph shall be in addition to those established under section 721(a).

"(3) EMISSION ALLOWANCES.—The Administrator shall deposit emission allowances established under paragraph (2) in the strategic reserve, except that, with respect to any such emission allowances in excess of the amount necessary to fill the strategic reserve to its original size, the Administrator shall—

"(A) except as provided in subparagraph (B), assign a vintage year to the emission allowance, which shall be no earlier than the year in which the allowance is established under paragraph (2), and shall treat such allowances

as ones that are not designated for distribution or auction for purposes of section 782(q) and (r); and

"(B) to the extent any such allowances cannot be assigned a vintage year because of the limitation in paragraph (4), retire the allowances.

"(4) LIMITATION.—In no case may the Administrator assign under paragraph (3)(A) more emission allowances to a vintage year than the number of emission allowances from that vintage year that were placed in the strategic reserve account under subsection (b)(1).

"(h) AVAILABILITY OF INTERNATIONAL OFFSET CREDITS FOR AUCTION.—

"(1) IN GENERAL.—The regulations promulgated under section 721(h) shall allow any entity holding international offset credits from reduced deforestation issued under section 743(e) to request that the Administrator include such offset credits in an upcoming strategic reserve auction. The regulations shall provide that—

"(A) such international offset credits will be used to fill bid orders only after the supply

of strategic reserve allowances available for sale at that auction has been depleted;

"(B) international offset credits may be sold at a strategic reserve auction under this subsection only if the Administrator determines that it is highly likely that covered entities will, to cover emissions occurring in the year the auction is held, use offset credits to demonstrate compliance under section 722 for emissions equal to or greater than 80 percent of 2 billion tons of carbon dioxide equivalent;

"(C) upon sale of such international offset credits, the Administrator shall retire those international offset credits, and establish and provide to the purchasers a number of emission allowances equal to 80 percent of the number of international offset credits so retired, which allowances shall be in addition to those established under section 721(a); and

"(D) for international offset credits sold pursuant to this subsection, the proceeds for the entity that offered the international offset credits for sale shall be the lesser of—

"(i) the average daily closing price for international offset credits sold on reg-

1 istered exchanges (or if such price is un-
2 available, the average price as determined
3 by the Administrator) during the six
4 months prior to the strategic reserve auc-
5 tion at which they were auctioned, with the
6 remaining funds collected upon the sale of
7 the international offset credits deposited in
8 the Treasury; and
9 ''(ii) the amount received for the
10 international offset credits at the auction.
11 ''(2) PROCEEDS.—For international offset cred-
12 its sold pursuant to this subsection, notwithstanding
13 section 3302 of title 31, United States Code, or any
14 other provision of law, within 90 days of receipt, the
15 United States shall transfer the proceeds from the
16 auction, as defined in paragraph (1)(D), to the enti-
17 ty that offered the international offset credits for
18 sale. No funds transferred from a purchaser to a
19 seller of international offset credits under this para-
20 graph shall be held by any officer or employee of the
21 United States or treated for any purpose as public
22 monies.
23 ''(3) PRICING.—When the Administrator acts
24 under this subsection as the agent of an entity in
25 possession of international offset credits, the Admin-

1 istrator is not obligated to obtain the highest price
2 possible for the international offset credits, and in-
3 stead shall auction such international offset credits
4 in the same manner and pursuant to the same rules
5 (except as modified in paragraph (1)) as set forth
6 for auctioning strategic reserve allowances. Entities
7 requesting that such international offset credits be
8 offered for sale at a strategic reserve auction may
9 not set a minimum reserve price for their inter-
10 national offset credits that is different than the min-
11 imum strategic reserve auction price set pursuant to
12 subsection (c).

13 ''(i) INITIAL REGULATIONS.—Not later than 24
14 months after the date of enactment of this title, the Ad-
15 ministrator shall promulgate regulations, in consultation
16 with other appropriate agencies, governing the auction of
17 allowances under this section. Such regulations shall in-
18 clude the following requirements:

19 ''(1) FREQUENCY; FIRST AUCTION.—Auctions
20 shall be held four times per year at regular intervals,
21 with the first auction to be held no later than March
22 31, 2012.

23 ''(2) AUCTION FORMAT.—Auctions shall follow
24 a single-round, sealed-bid, uniform price format.

"(3) PARTICIPATION; FINANCIAL ASSURANCE.—Auctions shall be open to any covered entity eligible to purchase emission allowances at the auction under subsection (a)(2), except that the Administrator may establish financial assurance requirements to ensure that auction participants can and will perform on their bids.

"(4) DISCLOSURE OF BENEFICIAL OWNERSHIP.—Each bidder in an auction shall be required to disclose the person or entity sponsoring or benefitting from the bidder's participation in the auction if such person or entity is, in whole or in part, other than the bidder.

"(5) PURCHASE LIMITS.—No person may, directly or in concert with another participant, purchase more than 20 percent of the allowances offered for sale at any quarterly auction.

"(6) PUBLICATION OF INFORMATION.—After the auction, the Administrator shall, in a timely fashion, publish the identities of winning bidders, the quantity of allowances obtained by each winning bidder, and the auction clearing price.

"(7) OTHER REQUIREMENTS.—The Administrator may include in the regulations such other requirements or provisions as the Administrator, in

consultation with other agencies as appropriate, considers appropriate to promote effective, efficient, transparent, and fair administration of auctions under this section.

"(j) REVISION OF REGULATIONS.—The Administrator may, at any time, in consultation with other agencies as appropriate, revise the initial regulations promulgated under subsection (i). Such revised regulations need not meet the requirements identified in subsection (i) if the Administrator determines that an alternative auction design would be more effective, taking into account factors including costs of administration, transparency, fairness, and risks of collusion or manipulation. In determining whether and how to revise the initial regulations under this subsection, the Administrator shall not consider maximization of revenues to the Federal Government.

"SEC. 727. PERMITS.

"(a) PERMIT PROGRAM.—For stationary sources subject to title V of this Act that are covered entities, the provisions of this title shall be implemented by permits issued to such covered entities (and enforced) in accordance with the provisions of title V, as modified by this title. Any such permit issued by the Administrator, or by a State or Indian tribe with an approved permit program, shall require the owner or operator of a covered entity to

hold allowances or offset credits at least equal to the total annual amount of carbon dioxide equivalents for its combined emissions and attributable greenhouse gas emissions to which section 722 applies. No such permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable. Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances or offset credits. Submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a covered entity that the owners and operators will hold allowances or offset credits for the entity's combined emissions and attributable greenhouse gas emissions to which section 722 applies shall be deemed to meet the proposed and approved planning requirements of title V. Recordation by the Administrator of transfers of allowances and offset credits shall amend automatically all applicable proposed or approved permit applications, compliance plans, and permits.

"(b) MULTIPLE OWNERS.—No permit shall be issued under this section and no allowances or offset credits shall be disbursed under this title to a covered entity or any other person until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the

1 holding and distribution of emission allowances and the
2 proceeds of transactions involving emission allowances.
3 Where there are multiple holders of a legal or equitable
4 title to, or a leasehold interest in, such a covered entity
5 or other entity or where a utility or industrial customer
6 purchases power under a long-term power purchase con-
7 tract from an independent power production facility that
8 is a covered entity, the certificate shall state—

9 "(1) that emission allowances and the proceeds
10 of transactions involving emission allowances will be
11 deemed to be held or distributed in proportion to
12 each holder's legal, equitable, leasehold, or contrac-
13 tual reservation or entitlement; or

14 "(2) if such multiple holders have expressly pro-
15 vided for a different distribution of emission allow-
16 ances by contract, that emission allowances and the
17 proceeds of transactions involving emission allow-
18 ances will be deemed to be held or distributed in ac-
19 cordance with the contract.

20 A passive lessor, or a person who has an equitable interest
21 through such lessor, whose rental payments are not based,
22 either directly or indirectly, upon the revenues or income
23 from the covered entity or other entity shall not be deemed
24 to be a holder of a legal, equitable, leasehold, or contrac-
25 tual interest for the purpose of holding or distributing

emission allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in a covered entity, or other entity, is held by a single person, the certificate shall state that all emission allowances received by the entity are deemed to be held for that person.

"(c) PROHIBITION.—It shall be unlawful for any person to operate any stationary source subject to the requirements of this section except in compliance with the terms and requirements of a permit issued by the Administrator or a State or Indian tribe with an approved permit program in accordance with this section. For purposes of this subsection, compliance, as provided in section 504(f), with a permit issued under title V which complies with this title for covered entities shall be deemed compliance with this subsection as well as section 502(a).

"(d) RELIABILITY.—Nothing in this section or title V shall be construed as requiring termination of operations of a stationary source that is a covered entity for failure to have an approved permit, or compliance plan, that is consistent with the requirements in the second and fifth sentences of subsection (a) concerning the holding of allowances or offset credits, except that any such cov-

ered entity may be subject to the applicable enforcement provision of section 113.

"(e) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations to implement this section. To provide for permits required under this section, each State in which one or more stationary sources that are covered entities are located shall submit, in accordance with this section and title V, revised permit programs for approval.

"SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.

"(a) QUALIFYING PROGRAMS.—The Administrator, in consultation with the Secretary of State, may by rule designate an international climate change program as a qualifying international program if—

"(1) the program is run by a national or supranational foreign government, and imposes a mandatory absolute tonnage limit on greenhouse gas emissions from 1 or more foreign countries, or from 1 or more economic sectors in such a country or countries; and

"(2) the program is at least as stringent as the program established by this title, including provisions to ensure at least comparable monitoring, compliance, enforcement, quality of offsets, and restrictions on the use of offsets.

"(b) DISQUALIFIED ALLOWANCES.—An international emission allowance may not be held under section 722(d)(2) if it is in the nature of an offset instrument or allowance awarded based on the achievement of greenhouse gas emission reductions or avoidance, or greenhouse gas sequestration, that are not subject to the mandatory absolute tonnage limits referred to in subsection (a)(1).

"(c) RETIREMENT.—

"(1) ENTITY CERTIFICATION.—The owner or operator of an entity that holds an international emission allowance under section 722(d)(2) shall certify to the Administrator that such international emission allowance has not previously been used to comply with any foreign, international, or domestic greenhouse gas regulatory program.

"(2) RETIREMENT.—

"(A) FOREIGN AND INTERNATIONAL REGULATORY ENTITIES.—The Administrator, in consultation with the Secretary of State, shall seek, by whatever means appropriate, including agreements and technical cooperation on allowance tracking, to ensure that any relevant foreign, international, and domestic regulatory entities—

"(i) are notified of the use, for purposes of compliance with this title, of any international emission allowance; and

"(ii) provide for the disqualification of such international emission allowance for any subsequent use under the relevant foreign, international, or domestic greenhouse gas regulatory program, regardless of whether such use is a sale, exchange, or submission to satisfy a compliance obligation.

"(B) DISQUALIFICATION FROM FURTHER USE.—The Administrator shall ensure that, once an international emission allowance has been disqualified or otherwise used for purposes of compliance with this title, such allowance shall be disqualified from any further use under this title.

"(d) USE LIMITATIONS.—The Administrator may, by rule, apply a limit to the percentage of the combined greenhouse gas emissions and attributable greenhouse gas emissions of a covered entity with respect to which compliance may be demonstrated by holding international emission allowances under section 722(d)(2), consistent with the purposes of the Safe Climate Act.

"PART D—OFFSETS

"SEC. 731. OFFSETS INTEGRITY ADVISORY BOARD.

''(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this title, the Administrator shall establish an independent Offsets Integrity Advisory Board. The Advisory Board shall make recommendations to the Administrator for use in promulgating and revising regulations under this part and part E, and for ensuring the overall environmental integrity of the programs established pursuant to those regulations.

''(b) MEMBERSHIP.—The Advisory Board shall be comprised of at least nine members. Each member shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section. The Administrator shall appoint Advisory Board members, including a chair and vice-chair of the Advisory Board. Terms shall be 3 years in length, except for initial terms, which may be up to 5 years in length to allow staggering. Members may be reappointed only once for an additional 3-year term, and such second term may follow directly after a first term.

''(c) ACTIVITIES.—The Advisory Board established pursuant to subsection (a) shall—

''(1) provide recommendations, not later than 90 days after the Advisory Board's establishment

and periodically thereafter, to the Administrator regarding offset project types that should be considered for eligibility under section 733, taking into consideration relevant scientific and other issues, including—

"(A) the availability of a representative data set for use in developing the activity baseline;

"(B) the potential for accurate quantification of greenhouse gas reduction, avoidance, or sequestration for an offset project type;

"(C) the potential level of scientific and measurement uncertainty associated with an offset project type; and

"(D) any beneficial or adverse environmental, public health, welfare, social, economic, or energy effects associated with an offset project type;

"(2) make available to the Administrator its advice and comments on offset methodologies that should be considered under regulations promulgated with respect to section 734, including methodologies to address the issues of additionality, activity baselines, quantification methods, leakage, uncertainty, permanence, and environmental integrity;

"(3) make available to the Administrator, and other relevant Federal agencies, its advice and comments regarding scientific, technical, and methodological issues specific to the issuance of international offset credits under section 743;

"(4) make available to the Administrator, and other relevant Federal agencies, its advice and comments regarding scientific, technical, and methodological issues associated with the implementation of part E;

"(5) make available to the Administrator its advice and comments on areas in which further knowledge is required to appraise the adequacy of existing, revised, or proposed methodologies for use under this part and part E, and describe the research efforts necessary to provide the required information; and

"(6) make available to the Administrator its advice and comments on other ways to improve or safeguard the environmental integrity of programs established under this part and part E.

"(d) SCIENTIFIC REVIEW OF OFFSET AND DEFORESTATION REDUCTION PROGRAMS.—Not later than January 1, 2017, and at five-year intervals thereafter, the Advisory Board shall submit to the Administrator and make

available to the public an analysis of relevant scientific and technical information related to this part and part E. The Advisory Board shall review approved and potential methodologies, scientific studies, offset project monitoring, offset project verification reports, and audits related to this part and part E, and evaluate the net emissions effects of implemented offset projects. The Advisory Board shall recommend changes to offset methodologies, protocols, or project types, or to the overall offset program under this part, to ensure that offset credits issued by the Administrator do not compromise the integrity of the annual emission reductions established under section 703, and to avoid or minimize adverse effects to human health or the environment.

"SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.

"(a) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with appropriate Federal agencies and taking into consideration the recommendations of the Advisory Board, shall promulgate regulations establishing a program for the issuance of offset credits in accordance with the requirements of this part. The Administrator shall periodically revise these regulations as necessary to meet the requirements of this part.

1 "(b) REQUIREMENTS.—The regulations described in
2 subsection (a) shall—
3 "(1) authorize the issuance of offset credits
4 with respect to qualifying offset projects that result
5 in reductions or avoidance of greenhouse gas emis-
6 sions, or sequestration of greenhouse gases;
7 "(2) ensure that such offset credits represent
8 verifiable and additional greenhouse gas emission re-
9 ductions or avoidance, or increases in sequestration;
10 "(3) ensure that offset credits issued for se-
11 questration offset projects are only issued for green-
12 house gas reductions that are permanent;
13 "(4) provide for the implementation of the re-
14 quirements of this part; and
15 "(5) include as reductions in greenhouse gases
16 reductions achieved through the destruction of meth-
17 ane and its conversion to carbon dioxide, and reduc-
18 tions achieved through destruction of
19 chlorofluorocarbons or other ozone depleting sub-
20 stances, if permitted by the Administrator under
21 section 619(b)(9) and subject to the conditions spec-
22 ified in section 619(b)(9), based on the carbon diox-
23 ide equivalent value of the substance destroyed.
24 "(c) COORDINATION TO MINIMIZE NEGATIVE EF-
25 FECTS.—In promulgating and implementing regulations

1 under this part, the Administrator shall act (including by
2 rejecting projects, if necessary) to avoid or minimize, to
3 the maximum extent practicable, adverse effects on human
4 health or the environment resulting from the implementa-
5 tion of offset projects under this part.

6 ''(d) OFFSET REGISTRY.—The Administrator shall
7 establish within the allowance tracking system established
8 under section 724(d) an Offset Registry for qualifying off-
9 set projects and offset credits issued with respect thereto
10 under this part.

11 ''(e) LEGAL STATUS OF OFFSET CREDIT.—An offset
12 credit does not constitute a property right.

13 ''(f) FEES.—The Administrator shall assess fees pay-
14 able by offset project developers in an amount necessary
15 to cover the administrative costs to the Environmental
16 Protection Agency of carrying out the activities under this
17 part. Amounts collected for such fees shall be available
18 to the Administrator for carrying out the activities under
19 this part to the extent provided in advance in appropria-
20 tions Acts.

21 **''SEC. 733. ELIGIBLE PROJECT TYPES.**

22 ''(a) LIST OF ELIGIBLE PROJECT TYPES.—

23 ''(1) IN GENERAL.—As part of the regulations
24 promulgated under section 732(a), the Adminis-
25 trator shall establish, and may periodically revise, a

1 list of types of projects eligible to generate offset
2 credits, including international offset credits, under
3 this part.

4 ''(2) ADVISORY BOARD RECOMMENDATIONS.—
5 In determining the eligibility of project types, the
6 Administrator shall take into consideration the rec-
7 ommendations of the Advisory Board. If a list estab-
8 lished under this section differs from the rec-
9 ommendations of the Advisory Board, the regula-
10 tions promulgated under section 732(a) shall include
11 a justification for the discrepancy.

12 ''(3) INITIAL DETERMINATION.—The Adminis-
13 trator shall establish the initial eligibility list under
14 paragraph (1) not later than one year after the date
15 of enactment of this title. The Administrator shall
16 add additional project types to the list not later than
17 2 years after the date of enactment of this title. In
18 determining the initial list, the Administrator shall
19 give priority to consideration of offset project types
20 that are recommended by the Advisory Board and
21 for which there are well developed methodologies
22 that the Administrator determines would meet the
23 criteria of section 734, with such modifications as
24 the Administrator deems appropriate. In establishing
25 methodologies pursuant to section 734, the Adminis-

trator shall give priority to methodologies for offset project types included on the initial eligibility list.

"(b) MODIFICATION OF LIST.—The Administrator—

"(1) may at any time, by rule, add a project type to the list established under subsection (a) if the Administrator, in consultation with appropriate Federal agencies and taking into consideration the recommendations of the Advisory Board, determines that the project type can generate additional reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases, subject to the requirements of this part;

"(2) may at any time, by rule, determine that a project type on the list does not meet the requirements of this part, and remove the project type from the list established under subsection (a), in consultation with appropriate Federal agencies and taking into consideration any recommendations of the Advisory Board; and

"(3) shall consider adding to or removing from the list established under subsection (a), at a minimum, project types proposed to the Administrator—

"(A) by petition pursuant to subsection (c); or

"(B) by the Advisory Board.

"(c) PETITION PROCESS.—Any person may petition the Administrator to modify the list established under subsection (a) by adding or removing a project type pursuant to subsection (b). Any such petition shall include a showing by the petitioner that there is adequate data to establish that the project type does or does not meet the requirements of this part. Not later than 12 months after receipt of such a petition, the Administrator shall either grant or deny the petition and publish a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition under this subsection on the basis of inadequate Environmental Protection Agency resources or time for review.

"SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.

"(a) METHODOLOGIES.—As part of the regulations promulgated under section 732(a), the Administrator shall establish, for each type of offset project listed as eligible under section 733, the following:

"(1) ADDITIONALITY.—A standardized methodology for determining the additionality of greenhouse gas emission reductions or avoidance, or greenhouse gas sequestration, achieved by an offset project of that type. Such methodology shall ensure, at a minimum, that any greenhouse gas emission reduction

or avoidance, or any greenhouse gas sequestration, is considered additional only to the extent that it results from activities that—

"(A) are not required by or undertaken to comply with any law, including any regulation or consent order;

"(B) were not commenced prior to January 1, 2009, except in the case of—

"(i) offset project activities that commenced after January 1, 2001, and were registered as of the date of enactment of this title under an offset program with respect to which the Administrator has made an affirmative determination under section 740(a)(2); or

"(ii) activities that are readily reversible, with respect to which the Administrator may set an alternative earlier date under this subparagraph that is not earlier than January 1, 2001, where the Administrator determines that setting such an alternative date may produce an environmental benefit by removing an incentive to cease and then reinitiate activities that began prior to January 1, 2009; and

"(C) exceed the activity baseline established under paragraph (2).

"(2) ACTIVITY BASELINES.—A standardized methodology for establishing activity baselines for offset projects of that type. The Administrator shall set activity baselines to reflect a conservative estimate of business-as-usual performance or practices for the relevant type of activity such that the baseline provides an adequate margin of safety to ensure the environmental integrity of offsets calculated in reference to such baseline.

"(3) QUANTIFICATION METHODS.—A standardized methodology for determining the extent to which greenhouse gas emission reductions or avoidance, or greenhouse gas sequestration, achieved by an offset project of that type exceed a relevant activity baseline, including protocols for monitoring and accounting for uncertainty.

"(4) LEAKAGE.—A standardized methodology for accounting for and mitigating potential leakage, if any, from an offset project of that type, taking uncertainty into account.

"(b) ACCOUNTING FOR REVERSALS.—

"(1) IN GENERAL.—For each type of sequestration project listed under section 733, the Adminis-

trator shall establish requirements to account for and address reversals, including—

"(A) a requirement to report any reversal with respect to an offset project for which offset credits have been issued under this part;

"(B) provisions to require emission allowances to be held in amounts to fully compensate for greenhouse gas emissions attributable to reversals, and to assign responsibility for holding such emission allowances; and

"(C) any other provisions the Administrator determines necessary to account for and address reversals.

"(2) MECHANISMS.—The Administrator shall prescribe mechanisms to ensure that any sequestration with respect to which an offset credit is issued under this part results in a permanent net increase in sequestration, and that full account is taken of any actual or potential reversal of such sequestration, with an adequate margin of safety. The Administrator shall prescribe at least one of the following mechanisms to meet the requirements of this paragraph:

"(A) An offsets reserve, pursuant to paragraph (3).

"(B) Insurance that provides for purchase and provision to the Administrator for retirement of an amount of offset credits or emission allowances equal in number to the tons of carbon dioxide equivalents of greenhouse gas emissions released due to reversal.

"(C) Another mechanism that the Administrator determines satisfies the requirements of this part.

"(3) OFFSETS RESERVE.—

"(A) IN GENERAL.—An offsets reserve referred to in paragraph (2)(A) is a program under which, before issuance of offset credits under this part, the Administrator shall subtract and reserve from the quantity to be issued a quantity of offset credits based on the risk of reversal. The Administrator shall—

"(i) hold these reserved offset credits in the offsets reserve; and

"(ii) register the holding of the reserved offset credits in the Offset Registry established under section 732(d).

"(B) PROJECT REVERSAL.—

"(i) IN GENERAL.—If a reversal has occurred with respect to an offset project

for which offset credits are reserved under this paragraph, the Administrator shall retire offset credits or emission allowances from the offsets reserve to fully account for the tons of carbon dioxide equivalent that are no longer sequestered.

"(ii) INTENTIONAL REVERSALS.—If the Administrator determines that a reversal was intentional, the offset project developer for the relevant offset project shall place into the offsets reserve a quantity of offset credits, or combination of offset credits and emission allowances, equal in number to the number of reserve offset credits that were canceled due to the reversal pursuant to clause (i).

"(iii) UNINTENTIONAL REVERSALS.—If the Administrator determines that a reversal was unintentional, the offset project developer for the relevant offset project shall place into the offsets reserve a quantity of offset credits, or combination of offset credits and emission allowances, equal in number to half the number of offset credits that were reserved for that offset

project, or half the number of reserve offset credits that were canceled due to the reversal pursuant to clause (i), whichever is less.

"(C) USE OF RESERVED OFFSET CREDITS.—Offset credits placed into the offsets reserve under this paragraph may not be used to comply with section 722.

"(c) CREDITING PERIODS.—

"(1) IN GENERAL.—For each offset project type, the Administrator shall specify a crediting period, and establish provisions for petitions for new crediting periods, in accordance with this subsection.

"(2) DURATION.—The crediting period shall be no less than 5 and no greater than 10 years for any project type other than those involving sequestration.

"(3) ELIGIBILITY.—An offset project shall be eligible to generate offset credits under this part only during the project's crediting period. During such crediting period, the project shall remain eligible to generate offset credits, subject to the methodologies and project type eligibility list that applied as of the date of project approval under section 735,

1 except as provided in paragraph (4) of this sub-
2 section.

3 "(4) PETITION FOR NEW CREDITING PERIOD.—
4 An offset project developer may petition for a new
5 crediting period to commence after termination of a
6 crediting period, subject to the methodologies and
7 project type eligibility list in effect at the time when
8 such petition is submitted. A petition may not be
9 submitted under this paragraph more than 18
10 months before the end of the pending crediting pe-
11 riod. The Administrator may limit the number of
12 new crediting periods available for projects of par-
13 ticular project types.

14 "(d) ENVIRONMENTAL INTEGRITY.—In establishing
15 the requirements under this section, the Administrator
16 shall apply conservative assumptions or methods to maxi-
17 mize the certainty that the environmental integrity of the
18 cap established under section 703 is not compromised.

19 "(e) PRE-EXISTING METHODOLOGIES.—In promul-
20 gating requirements under this section, the Administrator
21 shall give due consideration to methodologies for offset
22 projects existing as of the date of enactment of this title.

23 "(f) ADDED PROJECT TYPES.—The Administrator
24 shall establish methodologies described in subsection (a),
25 and, as applicable, requirements and mechanisms for re-

versals as described in subsection (b), for any project type that is added to the list pursuant to section 733.

"SEC. 735. APPROVAL OF OFFSET PROJECTS.

"(a) APPROVAL PETITION.—An offset project developer shall submit an offset project approval petition providing such information as the Administrator requires to determine whether the offset project is eligible for issuance of offset credits under rules promulgated pursuant to this part.

"(b) TIMING.—An approval petition shall be submitted to the Administrator under subsection (a) no later than the time at which an offset project's first verification report is submitted under section 736.

"(c) APPROVAL PETITION REQUIREMENTS.—As part of the regulations promulgated under section 732, the Administrator shall include provisions for, and shall specify, the required components of an offset project approval petition required under subsection (a), which shall include—

"(1) designation of an offset project developer; and

"(2) any other information that the Administrator considers to be necessary to achieve the purposes of this part.

"(d) APPROVAL AND NOTIFICATION.—Not later than 90 days after receiving a complete approval petition under

subsection (a), the Administrator shall make the approval petition publicly available, approve or deny the petition in writing and if the petition is denied, provide the reasons for denial, and make the Administrator's written decision publicly available. After an offset project is approved, the offset project developer shall not be required to resubmit an approval petition during the offset project's crediting period, except as provided in section 734(c)(4).

"(e) APPEAL.—The Administrator shall establish procedures for appeal and review of determinations made under subsection (d).

"(f) VOLUNTARY PREAPPROVAL REVIEW.—The Administrator may establish a voluntary preapproval review procedure, to allow an offset project developer to request the Administrator to conduct a preliminary eligibility review for an offset project. Findings of such reviews shall not be binding upon the Administrator. The voluntary preapproval review procedure—

"(1) shall require the offset project developer to submit such basic project information as the Administrator requires to provide a meaningful review; and

"(2) shall require a response from the Administrator not later than 6 weeks after receiving a request for review under this subsection.

"SEC. 736. VERIFICATION OF OFFSET PROJECTS.

"(a) IN GENERAL.—As part of the regulations promulgated under section 732(a), the Administrator shall establish requirements, including protocols, for verification of the quantity of greenhouse gas emission reductions or avoidance, or sequestration of greenhouse gases, resulting from an offset project. The regulations shall require that an offset project developer shall submit a report, prepared by a third-party verifier accredited under subsection (d), providing such information as the Administrator requires to determine the quantity of greenhouse gas emission reductions or avoidance, or sequestration of greenhouse gases, resulting from the offset project.

"(b) SCHEDULE.—The Administrator shall prescribe a schedule for the submission of verification reports under subsection (a).

"(c) VERIFICATION REPORT REQUIREMENTS.—The Administrator shall specify the required components of a verification report required under subsection (a), which shall include—

"(1) the name and contact information for a designated representative for the offset project developer;

"(2) the quantity of greenhouse gases reduced, avoided, or sequestered;

"(3) the methodologies applicable to the project pursuant to section 734;

"(4) a certification that the project meets the applicable requirements;

"(5) a certification establishing that the conflict of interest requirements in the regulations promulgated under subsection (d)(1) have been complied with; and

"(6) any other information that the Administrator considers to be necessary to achieve the purposes of this part.

"(d) VERIFIER ACCREDITATION.—

"(1) IN GENERAL.—As part of the regulations promulgated under section 732(a), the Administrator shall establish a process and requirements for periodic accreditation of third-party verifiers to ensure that such verifiers are professionally qualified and have no conflicts of interest.

"(2) STANDARDS.—

"(A) AMERICAN NATIONAL STANDARDS INSTITUTE ACCREDITATION.—The Administrator may accredit, or accept for purposes of accreditation under this subsection, verifiers accredited under the American National Standards Institute (ANSI) accreditation program in accord-

ance with ISO 14065. The Administrator shall accredit, or accept for accreditation, verifiers under this subparagraph only if the Administrator finds that the American National Standards Institute accreditation program provides sufficient assurance that the requirements of this part will be met.

"(B) EPA ACCREDITATION.—As part of the regulations promulgated under section 732(a), the Administrator may establish accreditation standards for verifiers under this subsection, and may establish related training and testing programs and requirements.

"(3) PUBLIC ACCESSIBILITY.—Each verifier meeting the requirements for accreditation in accordance with this subsection shall be listed in a publicly accessible database, which shall be maintained and updated by the Administrator.

"SEC. 737. ISSUANCE OF OFFSET CREDITS.

"(a) DETERMINATION AND NOTIFICATION.—Not later than 90 days after receiving a complete verification report under section 736, the Administrator shall—

"(1) make the report publicly available;

"(2) make a determination of the quantity of greenhouse gas emissions that have been reduced or

avoided, or greenhouse gases that have been sequestered, by the offset project; and

"(3) notify the offset project developer in writing of such determination and make such determination publicly available.

"(b) ISSUANCE OF OFFSET CREDITS.—The Administrator shall issue one offset credit to an offset project developer for each ton of carbon dioxide equivalent that the Administrator has determined has been reduced, avoided, or sequestered during the period covered by a verification report submitted in accordance with section 736, only if—

"(1) the Administrator has approved the offset project pursuant to section 735; and

"(2) the relevant emissions reduction, avoidance, or sequestration has—

"(A) already occurred, during the offset project's crediting period; and

"(B) occurred after January 1, 2009.

"(c) APPEAL.—The Administrator shall establish procedures for appeal and review of determinations made under subsection (a).

"(d) TIMING.—Offset credits meeting the criteria established in subsection (b) shall be issued not later than 2 weeks following the verification determination made by the Administrator under subsection (a).

"(e) REGISTRATION.—The Administrator shall assign a unique serial number to and register each offset credit to be issued in the Offset Registry established under section 732(d).

"SEC. 738. AUDITS.

"(a) IN GENERAL.—The Administrator shall, on an ongoing basis, conduct random audits of offset projects, offset credits, and practices of third-party verifiers. In each year, the Administrator shall conduct audits, at minimum, for a representative sample of project types and geographic areas.

"(b) DELEGATION.—The Administrator may delegate to a State or tribal government the responsibility for conducting audits under this section if the Administrator finds that the program proposed by the State or tribal government provides assurances equivalent to those provided by the auditing program of the Administrator, and that the integrity of the offset program under this part will be maintained. Nothing in this subsection shall prevent the Administrator from conducting any audit the Administrator considers necessary and appropriate.

"SEC. 739. PROGRAM REVIEW AND REVISION.

"At least once every 5 years, the Administrator shall review and, based on new or updated information and tak-

ing into consideration the recommendations of the Advisory Board, update and revise—

"(1) the list of eligible project types established under section 733;

"(2) the methodologies established, including specific activity baselines, under section 734(a);

"(3) the reversal requirements and mechanisms established or prescribed under section 734(b);

"(4) measures to improve the accountability of the offsets program; and

"(5) any other requirements established under this part to ensure the environmental integrity and effective operation of this part.

"SEC. 740. EARLY OFFSET SUPPLY.

"(a) PROJECTS REGISTERED UNDER OTHER GOVERNMENT-RECOGNIZED PROGRAMS.—Except as provided in subsection (b) or (c), the Administrator shall issue one offset credit for each ton of carbon dioxide equivalent emissions reduced, avoided, or sequestered—

"(1) under an offset project that was started after January 1, 2001;

"(2) for which a credit was issued under any regulatory or voluntary greenhouse gas emission offset program that the Administrator determines—

"(A) was established under State or tribal law or regulation prior to January 1, 2009, or has been approved by the Administrator pursuant to subsection (e);

"(B) has developed offset project type standards, methodologies, and protocols through a public consultation process or a peer review process;

"(C) has made available to the public standards, methodologies, and protocols that require that credited emission reductions, avoidance, or sequestration are permanent, additional, verifiable, and enforceable;

"(D) requires that all emission reductions, avoidance, or sequestration be verified by a State or tribal regulatory agency or an accredited third-party independent verification body;

"(E) requires that all credits issued are registered in a publicly accessible registry, with individual serial numbers assigned for each ton of carbon dioxide equivalent emission reductions, avoidance, or sequestration; and

"(F) ensures that no credits are issued for an activity if the entity administering the program, or a program administrator or represent-

ative, has funded, solicited, or served as a fund administrator for the development of the activity; and

"(3) for which the credit described in paragraph (2) is transferred to the Administrator.

"(b) INELIGIBLE CREDITS.—Subsection (a) shall not apply to offset credits that have expired or have been retired, canceled, or used for compliance under a program established under State or tribal law or regulation.

"(c) LIMITATION.—Notwithstanding subsection (a)(1), offset credits shall be issued under this section—

"(1) only for reductions or avoidance of greenhouse gas emissions, sequestration of greenhouse gases, or destruction of chlorofluorocarbons (subject to the conditions specified in section 619(b)(9) and based on the carbon dioxide equivalent value of the substance destroyed), that occur after January 1, 2009; and

"(2) only until the date that is 3 years after the date of enactment of this title, or the date that regulations promulgated under section 732(a) take effect, whichever occurs sooner.

"(d) RETIREMENT OF CREDITS.—The Administrator shall seek to ensure that offset credits described in sub-

1 section (a)(2) are retired for purposes of use under a pro-
2 gram described in subsection (b).

3 "(e) OTHER PROGRAMS.—(1) Offset programs that
4 either—

5 "(A) were not established under State or tribal
6 law or regulation; or

7 "(B) were not established prior to January 1,
8 2009,

9 but that otherwise meet all of the criteria of subsection
10 (a)(2) may apply to the Administrator to be approved
11 under this subsection as an eligible program for early off-
12 set credits under this section.

13 "(2) The Administrator shall approve any such pro-
14 gram that the Administrator determines has criteria and
15 methodologies of at least equal stringency to the criteria
16 and methodologies of the programs established under
17 State or tribal law or regulation that the Administrator
18 determines meet the criteria of subsection (a)(2). The Ad-
19 ministrator may approve types of offsets under any such
20 program that are subject to criteria and methodologies of
21 at least equal stringency to the criteria and methodologies
22 for such types of offsets applied under the programs estab-
23 lished under State or tribal law or regulation that the Ad-
24 ministrator determines meet the criteria of subsection
25 (a)(2). The Administrator shall make a determination on

any application received under this section by no later than 180 days from the date of receipt of the application.

"SEC. 741. ENVIRONMENTAL CONSIDERATIONS.

"If the Administrator lists forestry or other relevant land management-related offset projects as eligible offset project types under section 733, the Administrator, in consultation with appropriate Federal agencies, shall promulgate regulations for the selection and use of species in such offset projects—

"(1) to ensure that native species are given primary consideration in such projects;

"(2) to enhance biological diversity in such projects;

"(3) to prohibit the use of federally designated or State-designated noxious weeds;

"(4) to prohibit the use of a species listed by a regional or State invasive plant authority within the applicable region or State; and

"(5) in the case of forestry offset projects, in accordance with widely accepted, environmentally sustainable forestry practices.

"SEC. 742. TRADING.

"Section 724 shall apply to the trading of offset credits.

"SEC. 743. INTERNATIONAL OFFSET CREDITS.

"(a) IN GENERAL.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, may issue, in accordance with this section, international offset credits based on activities that reduce or avoid greenhouse gas emissions, or increase sequestration of greenhouse gases, in a developing country. Such credits may be issued for projects eligible under section 733 or as provided in subsection (c), (d), or (e) of this section.

"(b) ISSUANCE.—

"(1) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of State, the Administrator of the United States Agency for International Development, and any other appropriate Federal agency, and taking into consideration the recommendations of the Advisory Board, shall promulgate regulations for implementing this section. Except as otherwise provided in this section, the issuance of international offset credits under this section shall be subject to the requirements of this part.

"(2) REQUIREMENTS FOR INTERNATIONAL OFFSET CREDITS.—The Administrator may issue international offset credits only if—

"(A) the United States is a party to a bilateral or multilateral agreement or arrangement that includes the country in which the project or measure achieving the relevant greenhouse gas emission reduction or avoidance, or greenhouse gas sequestration, has occurred;

"(B) such country is a developing country; and

"(C) such agreement or arrangement—

"(i) ensures that the requirements of this part apply to the issuance of international offset credits under this section; and

"(ii) provides for the appropriate distribution of international offset credits issued.

"(c) SECTOR-BASED CREDITS.—

"(1) IN GENERAL.—In order to minimize the potential for leakage and to encourage countries to take nationally appropriate mitigation actions to reduce or avoid greenhouse gas emissions, or sequester greenhouse gases, the Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall—

"(A) identify sectors of specific countries with respect to which the issuance of international offset credits on a sectoral basis is appropriate; and

"(B) issue international offset credits for such sectors only on a sectoral basis.

"(2) IDENTIFICATION OF SECTORS.—

"(A) GENERAL RULE.—For purposes of paragraph (1)(A), a sectoral basis shall be appropriate for activities—

"(i) in countries that have comparatively high greenhouse gas emissions, or comparatively greater levels of economic development; and

"(ii) that, if located in the United States, would be within a sector subject to the compliance obligation under section 722.

"(B) FACTORS.—In determining the sectors and countries for which international offset credits should be awarded only on a sectoral basis, the Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall consider the following factors:

"(i) The country's gross domestic product.

"(ii) The country's total greenhouse gas emissions.

"(iii) Whether the comparable sector of the United States economy is covered by the compliance obligation under section 722.

"(iv) The heterogeneity or homogeneity of sources within the relevant sector.

"(v) Whether the relevant sector provides products or services that are sold in internationally competitive markets.

"(vi) The risk of leakage if international offset credits were issued on a project-level basis, instead of on a sectoral basis, for activities within the relevant sector.

"(vii) The capability of accurately measuring, monitoring, reporting, and verifying the performance of sources across the relevant sector.

"(viii) Such other factors as the Administrator, in consultation with the Sec-

retary of State and the Administrator of the United States Agency for International Development, determines are appropriate to—

"(I) ensure the integrity of the United States greenhouse gas emissions cap established under section 703; and

"(II) encourage countries to take nationally appropriate mitigation actions to reduce or avoid greenhouse gas emissions, or sequester greenhouse gases.

"(3) SECTORAL BASIS.—

"(A) DEFINITION.—In this subsection, the term 'sectoral basis' means the issuance of international offset credits only for the quantity of sector-wide reductions or avoidance of greenhouse gas emissions, or sector-wide increases in sequestration of greenhouse gases, achieved across the relevant sector of the economy relative to a domestically enforceable baseline level of absolute emissions established in an agreement or arrangement described in subsection (b)(2)(A) for the sector.

"(B) BASELINE.—The baseline for a sector shall be established on an absolute basis and at levels of greenhouse gas emissions consistent with the thresholds identified in section 705(e)(2) and lower than would occur under a business-as-usual scenario taking into account relevant domestic or international policies or incentives to reduce greenhouse gas emissions, among other factors, and additionality and performance shall be determined on the basis of such baseline.

"(d) CREDITS ISSUED BY AN INTERNATIONAL BODY.—

"(1) IN GENERAL.—The Administrator, in consultation with the Secretary of State, may issue international offset credits in exchange for instruments in the nature of offset credits that are issued by an international body established pursuant to the United Nations Framework Convention on Climate Change, to a protocol to such Convention, or to a treaty that succeeds such Convention. The Administrator may issue international offset credits under this subsection only if, in addition to the requirements of subsection (b), the Administrator has determined that the international body that issued the

instruments has implemented substantive and procedural requirements for the relevant project type that provide equal or greater assurance of the integrity of such instruments as is provided by the requirements of this part. Starting January 1, 2016, the Administrator shall issue no offset credit pursuant to this subsection if the activity generating the greenhouse gas emissions reductions or avoidance, or greenhouse gas sequestration, occurs in a country and sector identified by the Administrator under subsection (c).

"(2) RETIREMENT.—The Administrator, in consultation with the Secretary of State, shall seek, by whatever means appropriate, including agreements, arrangements, or technical cooperation with the international issuing body described in paragraph (1), to ensure that such body—

"(A) is notified of the Administrator's issuance, under this subsection, of an international offset credit in exchange for an instrument issued by such international body; and

"(B) provides, to the extent feasible, for the disqualification of the instrument issued by such international body for subsequent use under any relevant foreign or international greenhouse gas regulatory program, regardless

of whether such use is a sale, exchange, or submission to satisfy a compliance obligation.

"(e) OFFSETS FROM REDUCED DEFORESTATION.—

"(1) REQUIREMENTS.—The Administrator, in accordance with the regulations promulgated under subsection (b)(1) and an agreement or arrangement described in subsection (b)(2)(A), shall issue international offset credits for greenhouse gas emission reductions achieved through activities to reduce deforestation only if, in addition to the requirements of subsection (b)—

"(A) the activity occurs in—

"(i) a country listed by the Administrator pursuant to paragraph (2);

"(ii) a state or province listed by the Administrator pursuant to paragraph (5); or

"(iii) a country listed by the Administrator pursuant to paragraph (6);

"(B) except as provided in paragraph (5) or (6), the quantity of the international offset credits is determined by comparing the national emissions from deforestation relative to a national deforestation baseline for that country established, in accordance with an agreement or

arrangement described in subsection (b)(2)(A), pursuant to paragraph (4);

"(C) the reduction in emissions from deforestation has occurred before the issuance of the international offset credit and, taking into consideration relevant international standards, has been demonstrated using ground-based inventories, remote sensing technology, and other methodologies to ensure that all relevant carbon stocks are accounted;

"(D) the Administrator has made appropriate adjustments, such as discounting for any additional uncertainty, to account for circumstances specific to the country, including its technical capacity described in paragraph (2)(A);

"(E) the activity is designed, carried out, and managed—

"(i) in accordance with widely accepted, environmentally sustainable forest management practices;

"(ii) to promote or restore native forest species and ecosystems where practicable, and to avoid the introduction of invasive nonnative species;

"(iii) in a manner that gives due regard to the rights and interests of local communities, indigenous peoples, forest-dependent communities, and vulnerable social groups;

"(iv) with consultations with, and full participation of, local communities, indigenous peoples, and forest-dependent communities, in affected areas, as partners and primary stakeholders, prior to and during the design, planning, implementation, and monitoring and evaluation of activities; and

"(v) with equitable sharing of profits and benefits derived from offset credits with local communities, indigenous peoples, and forest-dependent communities; and

"(F) the reduction otherwise satisfies and is consistent with any relevant requirements established by an agreement reached under the auspices of the United Nations Framework Convention on Climate Change.

"(2) ELIGIBLE COUNTRIES.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency

for International Development, and in accordance with an agreement or arrangement described in subsection (b)(2)(A), shall establish, and periodically review and update, a list of the developing countries that have the capacity to participate in deforestation reduction activities at a national level, including—

"(A) the technical capacity to monitor, measure, report, and verify forest carbon fluxes for all significant sources of greenhouse gas emissions from deforestation with an acceptable level of uncertainty, as determined taking into account relevant internationally accepted methodologies, such as those established by the Intergovernmental Panel on Climate Change;

"(B) the institutional capacity to reduce emissions from deforestation, including strong forest governance and mechanisms to equitably distribute deforestation resources for local actions; and

"(C) a land use or forest sector strategic plan that—

"(i) assesses national and local drivers of deforestation and forest degradation and identifies reforms to national policies needed to address them;

"(ii) estimates the country's emissions from deforestation and forest degradation;

"(iii) identifies improvements in data collection, monitoring, and institutional capacity necessary to implement a national deforestation reduction program; and

"(iv) establishes a timeline for implementing the program and transitioning to low-emissions development with respect to emissions from forest and land use activities.

"(3) PROTECTION OF INTERESTS.—With respect to an agreement or arrangement described in subsection (b)(2)(A) that addresses international offset credits under this subsection, the Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall seek to ensure the establishment and enforcement by such country of legal regimes, processes, standards, and safeguards that—

"(A) give due regard to the rights and interests of local communities, indigenous peoples, forest-dependent communities, and vulnerable social groups;

"(B) promote consultations with, and full participation of, forest-dependent communities and indigenous peoples in affected areas, as partners and primary stakeholders, prior to and during the design, planning, implementation, and monitoring and evaluation of activities; and

"(C) encourage equitable sharing of profits and benefits derived from international offset credits with local communities, indigenous peoples, and forest-dependent communities.

"(4) NATIONAL DEFORESTATION BASELINE.—A national deforestation baseline established under this subsection shall—

"(A) be national in scope;

"(B) be consistent with nationally appropriate mitigation commitments or actions with respect to deforestation, taking into consideration the average annual historical deforestation rates of the country during a period of at least 5 years, the applicable drivers of deforestation, and other factors to ensure additionality;

"(C) establish a trajectory that would result in zero net deforestation by not later than 20 years after the national deforestation baseline has been established;

"(D) be adjusted over time to take account of changing national circumstances;

"(E) be designed to account for all significant sources of greenhouse gas emissions from deforestation in the country; and

"(F) be consistent with the national deforestation baseline, if any, established for such country under section 754(d)(1) and (2).

"(5) STATE-LEVEL OR PROVINCE-LEVEL ACTIVITIES.—

"(A) ELIGIBLE STATES OR PROVINCES.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall establish within 2 years after the date of enactment of this title, and periodically review and update, a list of states or provinces in developing countries where—

"(i) the developing country is not included on the list of countries established pursuant to paragraph (6)(A);

"(ii) the state or province by itself is a major emitter of greenhouse gases from tropical deforestation on a scale commen-

surate to the emissions of other countries; and

"(iii) the state or province meets the eligibility criteria in paragraphs (2) and (3) for the geographic area under its jurisdiction.

"(B) ACTIVITIES.—The Administrator may issue international offset credits for greenhouse gas emission reductions achieved through activities to reduce deforestation at a state or provincial level that meet the requirements of this section. Such credits shall be determined by comparing the emissions from deforestation within that state or province relative to the state or province deforestation baseline for that state or province established, in accordance with an agreement or arrangement described in subsection (b)(2)(A), pursuant to subparagraph (C) of this paragraph.

"(C) STATE OR PROVINCE DEFORESTATION BASELINE.—A state or province deforestation baseline shall—

"(i) be consistent with any existing nationally appropriate mitigation commitments or actions for the country in which

the activity is occurring, taking into consideration the average annual historical deforestation rates of the state or province during a period of at least 5 years, relevant drivers of deforestation, and other factors to ensure additionality;

"(ii) establish a trajectory that would result in zero net deforestation by not later than 20 years after the state or province deforestation baseline has been established; and

"(iii) be designed to account for all significant sources of greenhouse gas emissions from deforestation in the state or province and adjusted to fully account for emissions leakage outside the state or province.

"(D) PHASE OUT.—Beginning 5 years after the first calendar year for which a covered entity must demonstrate compliance with section 722(a), the Administrator shall issue no further international offset credits for eligible state-level or province-level activities to reduce deforestation pursuant to this paragraph.

"(6) PROJECTS AND PROGRAMS TO REDUCE DEFORESTATION.—

"(A) ELIGIBLE COUNTRIES.—The Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall establish within 2 years after the date of enactment of this title, and periodically review and update, a list of developing countries each of which—

"(i) the Administrator determines, based on recent, credible, and reliable emissions data, accounts for less than 1 percent of global greenhouse gas emissions and less than 3 percent of global forest-sector and land use change greenhouse gas emissions; and

"(ii) has, or in the determination of the Administrator is making a good faith effort to develop, a land use or forest sector strategic plan that meets the criteria described in paragraph (2)(C).

"(B) ACTIVITIES.—The Administrator may issue international offset credits for greenhouse gas emission reductions achieved through

1 project or program level activities to reduce de-
2 forestation in countries listed under subpara-
3 graph (A) that meet the requirements of this
4 section. The quantity of international offset
5 credits shall be determined by comparing the
6 project-level or program-level emissions from
7 deforestation to a deforestation baseline for
8 such project or program established pursuant to
9 subparagraph (C).

10 ''(C) PROJECT-LEVEL OR PROGRAM-LEVEL
11 BASELINE.—A project-level or program-level de-
12 forestation baseline shall—

13 ''(i) be consistent with any existing
14 nationally appropriate mitigation commit-
15 ments or actions for the country in which
16 the project or program is occurring, taking
17 into consideration the average annual his-
18 torical deforestation rates relevant to the
19 specific project or program during a period
20 of at least 5 years, applicable drivers of de-
21 forestation, and other factors to ensure
22 additionality;

23 ''(ii) be designed to account for all
24 significant sources of greenhouse gas emis-

sions from deforestation in the project or program boundary; and

"(iii) be adjusted to fully account for emissions leakage outside the project or program boundary.

"(D) PHASE OUT.—(i) Beginning 5 years after the first calendar year for which a covered entity must demonstrate compliance with section 722(a), the Administrator shall issue no further international offset credits for project-level or program-level activities pursuant to this paragraph, except as provided in clause (ii).

"(ii) The Administrator may extend the phase out deadline for the issuance of international offset credits under this paragraph by up to 8 years with respect to eligible activities taking place in a least developed country, which for purposes of this paragraph is defined as a foreign country that the United Nations has identified as among the least developed of developing countries at the time that the Administrator determines to provide an extension, if the Administrator, in consultation with the Secretary of State and the Administrator of the

United States Agency for International Development, determines the country—

"(I) lacks sufficient capacity to adopt and implement effective programs to achieve reductions in deforestation measured against national baselines;

"(II) is receiving support under part E to develop such capacity; and

"(III) has developed and is working to implement a credible national strategy or plan to reduce deforestation.

"(7) DEFORESTATION.—In implementing this subsection, the Administrator, taking into consideration the recommendations of the Advisory Board, may include forest degradation, or soil carbon losses associated with forested wetlands or peatlands, within the meaning of deforestation.

"(8) CONSULTATION.—In implementing this subsection, the Administrator shall consult with the Secretary of Agriculture on relevant matters within such Secretary's area of expertise.

"(f) MODIFICATION OF REQUIREMENTS.—In promulgating regulations under subsection (b)(1) with respect to the issuance of international offset credits under subsection (c), (d), or (e), the Administrator, in consultation

with the Secretary of State and the Administrator of the United States Agency for International Development, may modify or omit a requirement of this part (excluding the requirements of this section) if the Administrator determines that the application of that requirement to such subsection is not feasible. In modifying or omitting such a requirement on the basis of infeasibility, the Administrator, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall ensure, with an adequate margin of safety, the integrity of international offset credits issued under this section and of the greenhouse gas emissions cap established pursuant to section 703.

"(g) AVOIDING DOUBLE COUNTING.—The Administrator, in consultation with the Secretary of State, shall seek, by whatever means appropriate, including agreements, arrangements, or technical cooperation, to ensure that activities on the basis of which international offset credits are issued under this section are not used for compliance with an obligation to reduce or avoid greenhouse gas emissions, or increase greenhouse gas sequestration, under a foreign or international regulatory system. In addition, no international offset credits shall be issued for emission reductions from activities with respect to which

emission allowances were allocated under section 781 for distribution under part E.

''(h) LIMITATION.—The Administrator shall not issue international offset credits generated by projects based on the destruction of hydrofluorocarbons.

"PART E—SUPPLEMENTAL EMISSIONS REDUCTIONS FROM REDUCED DEFORESTATION

"SEC. 751. DEFINITIONS.

''In this part:

''(1) LEAKAGE PREVENTION ACTIVITIES.—The term 'leakage prevention activities' means activities in developing countries that are directed at preserving existing forest carbon stocks, including forested wetlands and peatlands, that might, absent such activities, be lost through leakage.

''(2) NATIONAL DEFORESTATION REDUCTION ACTIVITIES.—The term 'national deforestation reduction activities' means activities in developing countries that reduce a quantity of greenhouse gas emissions from deforestation that is calculated by measuring actual emissions against a national deforestation baseline established pursuant to section 754(d)(1) and (2).

''(3) SUBNATIONAL DEFORESTATION REDUCTION ACTIVITIES.—The term 'subnational deforest-

ation reduction activities' means activities in developing countries that reduce a quantity of greenhouse gas emissions from deforestation that are calculated by measuring actual emissions using an appropriate baseline established by the Administrator that is less than national in scope.

"(4) SUPPLEMENTAL EMISSIONS REDUCTIONS.—The term 'supplemental emissions reductions' means greenhouse gas emissions reductions achieved from reduced or avoided deforestation under this part.

"(5) USAID.—The term 'USAID' means the United States Agency for International Development.

"SEC. 752. FINDINGS.

"Congress finds that—

"(1) as part of a global effort to mitigate climate change, it is in the national interest of the United States to assist developing countries to reduce and ultimately halt emissions from deforestation;

"(2) deforestation is one of the largest sources of greenhouse gas emissions in developing countries, amounting to roughly 20 percent of overall emissions globally;

"(3) recent scientific analysis shows that it will be substantially more difficult to limit the increase in global temperatures to less than 2 degrees centigrade above preindustrial levels without reducing and ultimately halting net emissions from deforestation;

"(4) reducing emissions from deforestation is highly cost-effective, compared to many other sources of emissions reductions;

"(5) in addition to contributing significantly to worldwide efforts to address global warming, assistance under this part will generate significant environmental and social cobenefits, including protection of biodiversity, ecosystem services, and forest-related livelihoods; and

"(6) under the Bali Action Plan, developed country parties to the United Nations Framework Convention on Climate Change, including the United States, committed to 'enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation,' including, inter alia, consideration of 'improved access to adequate, predictable, and sustainable financial resources and financial and technical support, and the provision of new and addi-

tional resources, including official and concessional funding for developing country parties' .

"SEC. 753. SUPPLEMENTAL EMISSIONS REDUCTIONS THROUGH REDUCED DEFORESTATION.

''(a) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Administrator of USAID and any other appropriate agencies, shall promulgate regulations establishing a program to use emission allowances set aside for this purpose under section 781 to reduce greenhouse gas emissions from deforestation in developing countries in accordance with the requirements of this part.

''(b) OBJECTIVES.—The objectives of the program established under this section shall be to—

''(1) achieve supplemental emissions reductions of at least 720,000,000 tons of carbon dioxide equivalent in 2020, a cumulative amount of at least 6,000,000,000 tons of carbon dioxide equivalent by December 31, 2025, and additional supplemental emissions reductions in subsequent years;

''(2) build capacity to reduce deforestation in developing countries experiencing deforestation, including preparing developing countries to participate in international markets for international offset credits for reduced emissions from deforestation; and

"(3) preserve existing forest carbon stocks in countries where such forest carbon may be vulnerable to international leakage, particularly in developing countries with largely intact native forests.

"SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFORESTATION REDUCTION PROGRAM.

"(a) ELIGIBLE COUNTRIES.—The Administrator may support activities under this part only with respect to a developing country that—

"(1) the Administrator, in consultation with the Administrator of USAID, determines is experiencing deforestation or forest degradation or has standing forest carbon stocks that may be at risk of deforestation or degradation; and

"(2) has entered into a bilateral or multilateral agreement or arrangement with the United States establishing the conditions of its participation in the program established under this part, which shall include an agreement to meet the standards established under subsection (d) for the activities to which those standards apply.

"(b) ACTIVITIES.—

"(1) AUTHORIZED ACTIVITIES.—Subject to the requirements of this part, the Administrator, in consultation with the Administrator of USAID, may

support activities to achieve the objectives identified in section 753(b), including—

"(A) national deforestation reduction activities;

"(B) subnational deforestation reduction activities, including pilot activities that reduce greenhouse gas emissions but are subject to significant uncertainty;

"(C) activities to measure, monitor, and verify deforestation, avoided deforestation, and deforestation rates;

"(D) leakage prevention activities;

"(E) development of measurement, monitoring, and verification capacities to enable a country to quantify supplemental emissions reductions and to generate for sale offset credits from reduced or avoided deforestation;

"(F) development of governance structures to reduce deforestation and illegal logging;

"(G) enforcement of requirements for reduced deforestation or forest conservation;

"(H) efforts to combat illegal logging and increase enforcement cooperation;

"(I) providing incentives for policy reforms to achieve the objectives identified in section 753(b); and

"(J) monitoring and evaluation of the results of the activities conducted under this section.

"(2) ACTIVITIES SELECTED BY USAID.—

"(A) The Administrator of USAID, in consultation with the Administrator, may select for support and implementation pursuant to subsection (c) any of the activities described in paragraph (1), consistent with this part and the regulations promulgated under subsection (d), and subject to the requirement to achieve the objectives listed in section 753(b)(1).

"(B) With respect to the activities listed in subparagraphs (D) through (J) of paragraph (1), the Administrator of USAID, in consultation with the Administrator, shall have primary but not exclusive responsibility for selecting the activities to be supported and implemented.

"(3) INTERAGENCY COORDINATION.—The Administrator and the Administrator of USAID shall jointly develop and biennially update a strategic plan for meeting the objectives listed in section 753(b)

and shall execute a memorandum of understanding delineating the agencies' respective roles in implementing this part.

"(c) MECHANISMS.—

"(1) IN GENERAL.—The Administrator may support activities to achieve the objectives identified in section 753(b) by—

"(A) developing and implementing programs and projects that achieve such objectives; and

"(B) distributing emission allowances to a country that is eligible under subsection (a), to a private or public group (including international organizations), or to an international fund established by an international agreement to which the United States is a party, to carry out activities to achieve such objectives.

"(2) USAID ACTIVITIES.—With respect to activities selected and implemented by the Administrator of USAID pursuant to subsection (b)(2), the Administrator shall distribute emission allowances as provided in paragraph (1) of this subsection based upon the direction of the Administrator of USAID, subject to the availability of allowances for such activities.

"(3) IMPLEMENTATION THROUGH INTERNATIONAL ORGANIZATIONS.—If support is distributed through an international organization, the agency responsible for selecting activities in accordance with subsection (b)(1) or (2), in consultation with the Secretary of State, shall ensure the establishment and implementation of adequate mechanisms to apply and enforce the eligibility requirements and other requirements of this section.

"(4) ROLE OF THE SECRETARY OF STATE.—The Administrator may not distribute emission allowances under this part to the government of another country or to an international organization or international fund unless the Secretary of State has concurred with such distribution.

"(d) STANDARDS.—The Administrator, in consultation with the Administrator of USAID, shall promulgate regulations establishing standards to ensure that supplemental emissions reductions achieved through supported activities are additional, measurable, verifiable, permanent, and monitored, and account for leakage and uncertainty. In addition, such standards shall—

"(1) require the establishment of a national deforestation baseline for each country with national

deforestation reduction activities that is used to account for reductions achieved from such activities;

"(2) provide that a national deforestation baseline established under paragraph (1) shall—

"(A) be national in scope;

"(B) be consistent with nationally appropriate mitigation commitments or actions with respect to deforestation, taking into consideration the average annual historical deforestation rates of the country during a period of at least 5 years, the applicable drivers of deforestation, and other factors to ensure additionality;

"(C) establish a trajectory that would result in zero net deforestation by not later than 20 years from the date the baseline is established;

"(D) be adjusted over time to take account of changing national circumstances;

"(E) be designed to account for all significant sources of greenhouse gas emissions from deforestation in the country; and

"(F) be consistent with the national deforestation baseline, if any, established for such country under section 743(e)(4);

"(3) with respect to support provided pursuant to subsection (b)(1)(A) or (B), require supplemental emissions reductions to be achieved and verified prior to compensation through the distribution of emission allowances under this part;

"(4) with respect to accounting for subnational deforestation reduction activities that lack the standardized or precise measurement and monitoring techniques needed for a full accounting of changes in emissions or baselines, or are subject to other sources of uncertainty, apply a conservative discount factor to reflect the uncertainty regarding the levels of reductions achieved;

"(5) ensure that activities under this part shall be designed, carried out, and managed—

"(A) in accordance with widely accepted, environmentally sustainable forest management practices;

"(B) to promote or restore native forest species and ecosystems where practicable, and to avoid the introduction of invasive nonnative species;

"(C) in a manner that gives due regard to the rights and interests of local communities,

indigenous peoples, forest-dependent communities, and vulnerable social groups;

"(D) with consultations with, and full participation of, local communities, indigenous peoples, and forest-dependent communities in affected areas, as partners and primary stakeholders, prior to and during the design, planning, implementation, and monitoring and evaluation of activities; and

"(E) with equitable sharing of profits and benefits derived from the activities with local communities, indigenous peoples, and forest-dependent communities; and

"(6) with respect to support for all activities under this part, seek to ensure the establishment and enforcement, by the country in which the activities occur, of legal regimes, standards, processes, and safeguards that—

"(A) give due regard to the rights and interests of local communities, indigenous peoples, forest-dependent communities, and vulnerable social groups;

"(B) promote consultations with local communities and indigenous peoples and forest-dependent communities in affected areas, as part-

ners and primary stakeholders, prior to and during the design, planning, implementation, monitoring, and evaluation of activities under this part; and

"(C) encourage equitable sharing of profits and benefits from incentives for emissions reductions or leakage prevention with local communities, indigenous peoples, and forest-dependent communities.

"(e) SCOPE.—(1) The Administrator shall include within the scope of activities under this part reduced emissions from forest degradation.

"(2) The Administrator, in consultation with the Administrator of USAID, may decide, taking into account any advice from the Advisory Board, to expand, where appropriate, the scope of activities under this part to include reduced soil carbon-derived emissions associated with deforestation and degradation of forested wetlands and peatlands.

"(f) ACCOUNTING.—The Administrator shall establish a publicly accessible registry of the supplemental emissions reductions achieved through support provided under this part each year, after appropriately discounting for uncertainty and other relevant factors as required by the standards established under subsection (d).

1 "(g) TRANSITION TO NATIONAL REDUCTIONS.—Be-
2 ginning 5 years after the date that a country entered into
3 the agreement or arrangement required under subsection
4 (a)(2), the Administrator shall provide no further com-
5 pensation through emission allowances to that country
6 under this part for any subnational deforestation reduc-
7 tion activities, except that the Administrator may extend
8 this period by an additional 5 years if the Administrator,
9 in consultation with the Administrator of USAID, deter-
10 mines that—

11 "(1) the country is making substantial progress
12 towards adopting and implementing a program to
13 achieve reductions in deforestation measured against
14 a national baseline;

15 "(2) the greenhouse gas emissions reductions
16 achieved are not resulting in significant leakage; and

17 "(3) the greenhouse gas emissions reductions
18 achieved are being appropriately discounted to ac-
19 count for any leakage that is occurring.

20 The limitation under this subsection shall not apply to
21 support for activities to further the objectives listed in sec-
22 tion 753(b)(2) or (3).

23 "(h) COORDINATION WITH U.S. FOREIGN ASSIST-
24 ANCE.—Subject to the direction of the President, the Ad-
25 ministrator and the Administrator of USAID shall, to the

extent practicable and consistent with the objectives of this program, seek to align activities under this section with broader development, poverty alleviation, or natural resource management objectives and initiatives in the recipient country.

"(i) SUPPORT AS SUPPLEMENT.—The provision of support for activities under this part shall be used to supplement, and not to supplant, any other Federal, State, or local support available to carry out such qualifying activities under this part.

"(j) NOT ELIGIBLE FOR OFFSET CREDIT.—Activities that receive support under this part shall not be issued offset credits for the greenhouse gas emissions reductions or avoidance, or greenhouse gas sequestration, produced by such activities.

"SEC. 755. REPORTS AND REVIEWS.

"(a) REPORTS.—Not later than January 1, 2014, and annually thereafter, the Administrator and the Administrator of USAID shall submit to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives, and the Committee on Environment and Public Works and the Committee on Foreign Relations of the Senate, and make available to the public, a report on the support provided under this

1 part during the prior fiscal year. The report shall in-
2 clude—

3 "(1) a statement of the quantity of supple-
4 mental emissions reductions for which compensation
5 in the form of emission allowances was provided
6 under this part during the prior fiscal year, as reg-
7 istered by the Administrator under section 754(f);
8 and

9 "(2) a description of the national and sub-
10 national deforestation reduction activities, capacity-
11 building activities, and leakage prevention activities
12 supported under this part, including a statement of
13 the quantity of emission allowances distributed to
14 each recipient for each activity during the prior fis-
15 cal year, and a description of what was accomplished
16 through each of the activities.

17 "(b) REVIEWS.—Not later than 4 years after the date
18 of enactment of this title and every 5 years thereafter,
19 the Administrator and the Administrator of USAID, tak-
20 ing into consideration any evaluation by or recommenda-
21 tions from the Advisory Board established under section
22 731, shall conduct a review of the activities undertaken
23 pursuant to this part and make any appropriate changes
24 in the program established under this part, consistent with
25 the requirements of this part, based on the findings of the

1 review. The review shall include the effects of the activities
2 on—
3 "(1) total documented carbon stocks of each
4 country that directly or indirectly received support
5 under this part compared with such country's na-
6 tional deforestation baseline established under sec-
7 tion 754(d)(1) and (2);
8 "(2) the number of countries with the capacity
9 to generate for sale instruments in the nature of off-
10 set credits from forest-related activities, and the
11 amount of such activities;
12 "(3) forest governance in each country that di-
13 rectly or indirectly received support under this part;
14 "(4) indigenous peoples and forest-dependent
15 communities residing in areas affected by such ac-
16 tivities;
17 "(5) biodiversity and ecosystem services within
18 forested areas associated with the activities;
19 "(6) subnational and international leakage; and
20 "(7) any program or mechanism established
21 under the United Nations Framework Convention on
22 Climate Change related to greenhouse gas emissions
23 from deforestation.

"SEC. 756. LEGAL EFFECT OF PART.

"(1) IN GENERAL.—Nothing in this part supersedes, limits, or otherwise affects any restriction imposed by Federal law (including regulations) on any interaction between an entity located in the United States and an entity located in a foreign country.

"(2) ROLE OF THE SECRETARY OF STATE.—Nothing in this part shall be construed as affecting the role of the Secretary of State or the responsibilities of the Secretary under section 622(c) of the Foreign Assistance Act of 1961.".

SEC. 312. DEFINITIONS.

Title VII of the Clean Air Act, as added by section 311 of this Act, is amended by inserting before part A the following new section:

"SEC. 700. DEFINITIONS.

"In this title:

"(1) ADDITIONAL.—The term 'additional', when used with respect to reductions or avoidance of greenhouse gas emissions, or to sequestration of greenhouse gases, means reductions, avoidance, or sequestration that result in a lower level of net greenhouse gas emissions or atmospheric concentrations than would occur in the absence of an offset project.

"(2) ADDITIONALITY.—The term 'additionality' means the extent to which reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases, are additional.

"(3) ADVISORY BOARD.—The term 'Advisory Board' means the Offsets Integrity Advisory Board established under section 731.

"(4) AFFILIATED.—The term 'affiliated'—

"(A) when used in relation to an entity means owned or controlled by, or under common ownership or control with, another entity, as determined by the Administrator; and

"(B) when used in relation to a natural gas local distribution company, means owned or controlled by, or under common ownership or control with, another natural gas local distribution company, as determined by the Administrator.

"(5) ALLOWANCE.—The term 'allowance' means a limited authorization to emit, or have attributable greenhouse gas emissions in an amount of, 1 ton of carbon dioxide equivalent of a greenhouse gas in accordance with this title. Such term includes an emission allowance, a compensatory allowance, and an international emission allowance,

but does not include an international reserve allowance established under section 766.

"(6) ATTRIBUTABLE GREENHOUSE GAS EMISSIONS.—The term 'attributable greenhouse gas emissions', for a given calendar year, means—

"(A) for a covered entity that is a fuel producer or importer described in paragraph (13)(B), greenhouse gases that would be emitted from the combustion of any petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid, produced or imported by that covered entity during that calendar year for sale or distribution in interstate commerce, assuming no capture and sequestration of any greenhouse gas emissions;

"(B) for a covered entity that is an industrial gas producer or importer described in paragraph (13)(C), the tons of carbon dioxide equivalent of any gas described in clauses (i) through (vi) of paragraph (13)(C)—

"(i) produced or imported by such covered entity during that calendar year for sale or distribution in interstate commerce; or

"(ii) released as fugitive emissions in the production of fluorinated gas; and

"(C) for a natural gas local distribution company described in paragraph (13)(J), greenhouse gases that would be emitted from the combustion of the natural gas, and any other gas meeting the specifications for commingling with natural gas for purposes of delivery, that such entity delivered during that calendar year to customers that are not covered entities, assuming no capture and sequestration of that greenhouse gas.

"(7) BIOLOGICAL SEQUESTRATION; BIOLOGICALLY SEQUESTERED.—The terms 'biological sequestration' and 'biologically sequestered' mean the removal of greenhouse gases from the atmosphere by terrestrial biological means, such as by growing plants, and the storage of those greenhouse gases in plants or soils.

"(8) CAPPED EMISSIONS.—The term 'capped emissions' means greenhouse gas emissions to which section 722 applies, including emissions from the combustion of natural gas, petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid to which section 722(b)(2) or (8) applies.

"(9) CAPPED SOURCE.—The term 'capped source' means a source that directly emits capped emissions.

"(10) CARBON DIOXIDE EQUIVALENT.—The term 'carbon dioxide equivalent' means the unit of measure, expressed in metric tons, of greenhouse gases as provided under section 711 or 712.

"(11) CARBON STOCK.—The term 'carbon stock' means the quantity of carbon contained in a biological reservoir or system which has the capacity to accumulate or release carbon.

"(12) COMPENSATORY ALLOWANCE.—The term 'compensatory allowance' means an allowance issued under section 721(f).

"(13) COVERED ENTITY.—The term 'covered entity' means each of the following:

"(A) Any electricity source.

"(B) Any stationary source that produces, and any entity that (or any group of two or more affiliated entities that, in the aggregate) imports, for sale or distribution in interstate commerce in 2008 or any subsequent year, petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid, the combustion of which would emit 25,000 or more tons

of carbon dioxide equivalent, as determined by the Administrator.

"(C) Any stationary source that produces, and any entity that (or any group of two or more affiliated entities that, in the aggregate) imports, for sale or distribution in interstate commerce, in bulk, or in products designated by the Administrator, in 2008 or any subsequent year 25,000 or more tons of carbon dioxide equivalent of—

"(i) fossil fuel-based carbon dioxide;

"(ii) nitrous oxide;

"(iii) perfluorocarbons;

"(iv) sulfur hexafluoride;

"(v) any other fluorinated gas, except for nitrogen trifluoride, that is a greenhouse gas, as designated by the Administrator under section 711; or

"(vi) any combination of greenhouse gases described in clauses (i) through (v).

"(D) Any stationary source that has emitted 25,000 or more tons of carbon dioxide equivalent of nitrogen trifluoride in 2008 or any subsequent year.

"(E) Any geologic sequestration site.

"(F) Any stationary source in the following industrial sectors:

"(i) Adipic acid production.

"(ii) Primary aluminum production.

"(iii) Ammonia manufacturing.

"(iv) Cement production, excluding grinding-only operations.

"(v) Hydrochlorofluorocarbon production.

"(vi) Lime manufacturing.

"(vii) Nitric acid production.

"(viii) Petroleum refining.

"(ix) Phosphoric acid production.

"(x) Silicon carbide production.

"(xi) Soda ash production.

"(xii) Titanium dioxide production.

"(xiii) Coal-based liquid or gaseous fuel production.

"(G) Any stationary source in the chemical or petrochemical sector that, in 2008 or any subsequent year—

"(i) produces acrylonitrile, carbon black, ethylene, ethylene dichloride, ethylene oxide, or methanol; or

"(ii) produces a chemical or petrochemical product if producing that product results in annual combustion plus process emissions of 25,000 or more tons of carbon dioxide equivalent.

"(H) Any stationary source that—

"(i) is in one of the following industrial sectors: ethanol production; ferroalloy production; fluorinated gas production; food processing; glass production; hydrogen production; iron and steel production; lead production; pulp and paper manufacturing; and zinc production; and

"(ii) has emitted 25,000 or more tons of carbon dioxide equivalent in 2008 or any subsequent year.

"(I) Any fossil fuel-fired combustion device (such as a boiler) or grouping of such devices that—

"(i) is all or part of an industrial source not specified in subparagraph (D), (F), (G), or (H); and

"(ii) has emitted 25,000 or more tons of carbon dioxide equivalent in 2008 or any subsequent year.

"(J) Any natural gas local distribution company that (or any group of 2 or more affiliated natural gas local distribution companies that, in the aggregate), in 2008 or any subsequent year, delivers 460,000,000 cubic feet or more of natural gas, and any other gas meeting the specifications for commingling with natural gas for purposes of delivery, to customers that are not covered entities.

"(14) CREDITING PERIOD.—The term 'crediting period' means the period with respect to which an offset project is eligible to earn offset credits under part D, as determined under section 734(c).

"(15) DESIGNATED REPRESENTATIVE.—The term 'designated representative' means, with respect to a covered entity, a reporting entity (as defined in section 713), an offset project developer, or any other entity receiving or holding allowances or offset credits under this title, an individual authorized, through a certificate of representation submitted to the Administrator by the owners and operators or similar entity official, to represent the owners and operators or similar entity official in all matters pertaining to this title (including the holding, transfer, or disposition of allowances or offset credits), and to

make all submissions to the Administrator under this title.

"(16) DEVELOPING COUNTRY.—The term 'developing country' means a country eligible to receive official development assistance according to the income guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

"(17) DOMESTIC OFFSET CREDIT.—The term 'domestic offset credit' means an offset credit issued under part D, other than an international offset credit.

"(18) ELECTRICITY SOURCE.—The term 'electricity source' means a stationary source that includes one or more utility units.

"(19) EMISSION.—The term 'emission' means the release of a greenhouse gas into the ambient air. Such term does not include gases that are captured and geologically sequestered, except to the extent that they are later released into the atmosphere, in which case compliance must be demonstrated pursuant to section 722(b)(5).

"(20) EMISSION ALLOWANCE.—The term 'emission allowance' means an allowance established

under section 721(a) or section 726(g)(2) or (h)(1)(C).

"(21) FAIR MARKET VALUE.—The term 'fair market value' means the average daily closing price on registered exchanges or, if such a price is unavailable, the average price as determined by the Administrator, during a specified time period, of an emission allowance.

"(22) FEDERAL LAND.—The term 'Federal land' means land that is owned by the United States, other than land held in trust for an Indian or Indian tribe.

"(23) FOSSIL FUEL.—The term 'fossil fuel' means natural gas, petroleum, or coal, or any form of solid, liquid, or gaseous fuel derived from such material, including consumer products that are derived from such materials and are combusted.

"(24) FOSSIL FUEL-FIRED.—The term 'fossil fuel-fired' means powered by combustion of fossil fuel, alone or in combination with any other fuel, regardless of the percentage of fossil fuel consumed.

"(25) FUGITIVE EMISSIONS.—The term 'fugitive emissions' means emissions from leaks, valves, joints, or other small openings in pipes, ducts, or other equipment, or from vents.

"(26) GEOLOGIC SEQUESTRATION; GEOLOGICALLY SEQUESTERED.—The terms 'geologic sequestration' and 'geologically sequestered' mean the sequestration of greenhouse gases in subsurface geologic formations for purposes of permanent storage.

"(27) GEOLOGIC SEQUESTRATION SITE.—The term 'geologic sequestration site' means a site where carbon dioxide is geologically sequestered.

"(28) GREENHOUSE GAS.—The term 'greenhouse gas' means any gas described in section 711(a) or designated under section 711, except to the extent that it is regulated under title VI.

"(29) HIGH CONSERVATION PRIORITY LAND.—The term 'high conservation priority land' means land that is not Federal land and is—

"(A) globally or State ranked as critically imperiled or imperiled under a State Natural Heritage Program; or

"(B) old-growth or late-successional forest, as identified by the office of the State Forester or relevant State agency with regulatory jurisdiction over forestry activities.

"(30) HOLD.—The term 'hold' means, with respect to an allowance or offset credit, to have in the appropriate account in the allowance tracking sys-

tem established under section 724(d), or submit to the Administrator for recording in such account.

"(31) INDUSTRIAL SOURCE.—The term 'industrial source' means any stationary source that—

"(A) is not an electricity source; and

"(B) is in—

"(i) the manufacturing sector (as defined in North American Industrial Classification System codes 31, 32, and 33); or

"(ii) the natural gas processing or natural gas pipeline transportation sector (as defined in North American Industrial Classification System codes 211112 and 486210).

"(32) INTERNATIONAL EMISSION ALLOWANCE.—The term 'international emission allowance' means a tradable authorization to emit 1 ton of carbon dioxide equivalent of greenhouse gas that is issued by a national or supranational foreign government pursuant to a qualifying international program designated by the Administrator pursuant to section 728(a).

"(33) INTERNATIONAL OFFSET CREDIT.—The term 'international offset credit' means an offset

1 credit issued by the Administrator under section
2 743.
3 "(34) LEAKAGE.—Except as provided in part
4 F, the term 'leakage' means a significant increase in
5 greenhouse gas emissions, or significant decrease in
6 sequestration, which is caused by an offset project or
7 activities under part E and occurs outside the
8 boundaries of the offset project or the relevant pro-
9 gram or project under part E.
10 "(35) MINERAL SEQUESTRATION.—The term
11 'mineral sequestration' means sequestration of car-
12 bon dioxide from the atmosphere by capturing car-
13 bon dioxide into a permanent mineral, such as the
14 aqueous precipitation of carbonate minerals that re-
15 sults in the storage of carbon dioxide in a mineral
16 form.
17 "(36) NATURAL GAS LIQUID.—The term 'nat-
18 ural gas liquid' means ethane, butane, isobutane,
19 natural gasoline, and propane.
20 "(37) NATURAL GAS LOCAL DISTRIBUTION
21 COMPANY.—The term 'natural gas local distribution
22 company' has the meaning given the term 'local dis-
23 tribution company' in section 2(17) of the Natural
24 Gas Policy Act of 1978 (15 U.S.C. 3301(17)).

"(38) OFFSET CREDIT.—The term 'offset credit' means a credit issued under part D.

"(39) OFFSET PROJECT.—The term 'offset project' means a project or activity that reduces or avoids greenhouse gas emissions, or sequesters greenhouse gases, and for which offset credits are or may be issued under part D.

"(40) OFFSET PROJECT DEVELOPER.—The term 'offset project developer' means the individual or entity designated as the offset project developer in an offset project approval petition under section 735(c)(1).

"(41) PETROLEUM.—The term 'petroleum' includes crude oil, tar sands, oil shale, and heavy oils.

"(42) RENEWABLE BIOMASS.—The term 'renewable biomass' means any of the following:

"(A) Plant material, including waste material, harvested or collected from actively managed agricultural land that was in cultivation, cleared, or fallow and nonforested on January 1, 2009.

"(B) Plant material, including waste material, harvested or collected from pastureland that was nonforested on January 1, 2009.

"(C) Nonhazardous vegetative matter derived from waste, including separated yard waste, landscape right-of-way trimmings, construction and demolition debris or food waste (but not municipal solid waste, recyclable waste paper, painted, treated or pressurized wood, or wood contaminated with plastic or metals).

"(D) Animal waste or animal byproducts, including products of animal waste digesters.

"(E) Algae.

"(F) Trees, brush, slash, residues, or any other vegetative matter removed from within 600 feet of any building, campground, or route designated for evacuation by a public official with responsibility for emergency preparedness, or from within 300 feet of a paved road, electric transmission line, utility tower, or water supply line.

"(G) Residues from or byproducts of milled logs.

"(H) Any of the following removed from forested land that is not Federal land and is not high conservation priority land:

"(i) Trees, brush, slash, residues, interplanted energy crops, or any other

1 vegetative matter removed from an actively
2 managed tree plantation established—
3 "(I) prior to January 1, 2009; or
4 "(II) on land that, as of January
5 1, 2009, was cultivated or fallow and
6 non-forested.
7 "(ii) Trees, logging residue, thinnings,
8 cull trees, pulpwood, and brush removed
9 from naturally-regenerated forests or other
10 non-plantation forests, including for the
11 purposes of hazardous fuel reduction or
12 preventative treatment for reducing or con-
13 taining insect or disease infestation.
14 "(iii) Logging residue, thinnings, cull
15 trees, pulpwood, brush and species that are
16 non-native and noxious, from stands that
17 were planted and managed after January
18 1, 2009, to restore or maintain native for-
19 est types.
20 "(iv) Dead or severely damaged trees
21 removed within 5 years of fire, blowdown,
22 or other natural disaster, and badly in-
23 fested trees.
24 "(I) Materials, pre-commercial thinnings,
25 or removed invasive species from National For-

est System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), including those that are byproducts of preventive treatments (such as trees, wood, brush, thinnings, chips, and slash), that are removed as part of a federally recognized timber sale, or that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health, and that are—

"(i) not from components of the National Wilderness Preservation System, Wilderness Study Areas, Inventoried Roadless Areas, old growth or mature forest stands, components of the National Landscape Conservation System, National Monuments, National Conservation Areas, Designated Primitive Areas; or Wild and Scenic Rivers corridors;

"(ii) harvested in environmentally sustainable quantities, as determined by the appropriate Federal land manager; and

"(iii) harvested in accordance with Federal and State law, and applicable land management plans.

"(43) RETIRE.—The term 'retire', with respect to an allowance or offset credit established or issued under this title, means to disqualify such allowance or offset credit for any subsequent use under this title, regardless of whether the use is a sale, exchange, or submission of the allowance or offset credit to satisfy a compliance obligation.

"(44) REVERSAL.—The term 'reversal' means an intentional or unintentional loss of sequestered greenhouse gases to the atmosphere.

"(45) SEQUESTERED AND SEQUESTRATION.—The terms 'sequestered' and 'sequestration' mean the separation, isolation, or removal of greenhouse gases from the atmosphere, as determined by the Administrator. The terms include biological, geologic, and mineral sequestration, but do not include ocean fertilization techniques.

"(46) STATIONARY SOURCE.—The term 'stationary source' means any integrated operation comprising any plant, building, structure, or stationary equipment, including support buildings and equipment, that is located within one or more contiguous or adjacent properties, is under common control of the same person or persons, and emits or may emit a greenhouse gas.

"(47) STRATEGIC RESERVE ALLOWANCE.—The term 'strategic reserve allowance' means an emission allowance reserved for, transferred to, or deposited in the strategic reserve under section 726.

"(48) TON.—The term 'ton' means metric ton.

"(49) UNCAPPED EMISSIONS.—The term 'uncapped emissions' means emissions of greenhouse gases emitted after December 31, 2011, that are not capped emissions.

"(50) UNITED STATES GREENHOUSE GAS EMISSIONS.—The term 'United States greenhouse gas emissions' means the total quantity of annual greenhouse gas emissions from the United States, as calculated by the Administrator and reported to the United Nations Framework Convention on Climate Change Secretariat.

"(51) UTILITY UNIT.—The term 'utility unit' means a combustion device that, on January 1, 2009, or any date thereafter, is fossil fuel-fired and serves a generator that produces electricity for sale, unless such combustion device, during the 12-month period starting the later of January 1, 2009, or the commencement of commercial operation and each calendar year starting after such later date—

"(A) is part of an integrated cycle system that cogenerates steam and electricity during normal operation and that supplies one-third or less of its potential electric output capacity and 25 MW or less of electrical output for sale; or

"(B) combusts materials of which more than 95 percent is municipal solid waste on a heat input basis.

"(52) VINTAGE YEAR.—The term 'vintage year' means the calendar year for which an emission allowance is established under section 721(a) or which is assigned to an emission allowance under section 726(g)(3)(A), except that the vintage year for a strategic reserve allowance shall be the year in which such allowance is purchased at auction.".

Subtitle B—Disposition of Allowances

SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL WARMING POLLUTION REDUCTION PROGRAM.

Title VII of the Clean Air Act, as added by section 311 of this Act, is amended by adding at the end the following part:

"PART H—DISPOSITION OF ALLOWANCES

"SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLEMENTAL REDUCTIONS.

''(a) IN GENERAL.—The Administrator shall allocate for each vintage year the following percentage of the emission allowances established under section 721(a), for distribution in accordance with part E:

''(1) For vintage years 2012 through 2025, 5 percent.

''(2) For vintage years 2026 through 2030, 3 percent.

''(3) For vintage years 2031 through 2050, 2 percent.

''(b) ADJUSTMENT.—The Administrator shall modify the percentages set forth in subsection (a) as necessary to ensure the achievement of the annual supplemental emission reduction objective for 2020, and the cumulative reduction objective through 2025, set forth in section 753(b)(1).

''(c) CARRYOVER.—If the Administrator has not distributed all of the allowances allocated pursuant to this section for a given vintage year by the end of that year, all such undistributed emission allowances shall, in accordance with section 782(s), be exchanged for allowances from the following vintage year and treated as part of the

allocation for supplemental reductions entities under this section for that later vintage year.

"SEC. 782. ALLOCATION OF EMISSION ALLOWANCES.

"(a) ELECTRICITY CONSUMERS.—(1) The Administrator shall allocate emission allowances for the benefit of electricity consumers, to be distributed in accordance with section 783(b), (c), and (d) in the following amounts:

"(A) For vintage years 2012 and 2013: 43.75 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2014 and 2015: 38.89 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2016 through 2025: 35.00 percent of the emission allowances established for each year under section 721(a).

"(D) For vintage year 2026: 28 percent of the emission allowances established for that year under section 721(a).

"(E) For vintage year 2027: 21 percent of the emission allowances established for that year under section 721(a).

"(F) For vintage year 2028: 14 percent of the emission allowances established for that year under section 721(a).

"(G) For vintage year 2029: 7 percent of the emission allowances established for that year under section 721(a).

"(2) The Administrator shall allocate emission allowances for energy efficiency, renewable electricity, and low income ratepayer assistance programs administered by small electricity local distribution companies, to be distributed in accordance with section 783(e) in the following amounts:

"(A) For vintage years 2012 through 2025: 0.5 percent of the emission allowances established each year under section 721(a).

"(B) For vintage year 2026: 0.4 percent of the emission allowances established for that year under section 721(a).

"(C) For vintage year 2027: 0.3 percent of the emission allowances established for that year under section 721(a).

"(D) For vintage year 2028: 0.2 percent of the emission allowances established for that year under section 721(a).

"(E) For vintage year 2029: 0.1 percent of the emission allowances established for that year under section 721(a).

"(b) NATURAL GAS CONSUMERS.—The Administrator shall allocate emission allowances for the benefit of natural gas consumers to be distributed in accordance with section 784 in the following amounts:

"(1) For vintage years 2016 through 2025, 9 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage year 2026, 7.2 percent of the emission allowances established for that year under section 721(a).

"(3) For vintage year 2027, 5.4 percent of the emission allowances established for that year under section 721(a).

"(4) For vintage year 2028, 3.6 percent of the emission allowances established for that year under section 721(a).

"(5) For vintage year 2029, 1.8 percent of the emission allowances established for that year under section 721(a).

"(c) HOME HEATING OIL AND PROPANE CONSUMERS.—The Administrator shall allocate emission allowances for the benefit of home heating oil and propane consumers to be distributed in accordance with section 785 in the following amounts:

"(1) For vintage years 2012 and 2013, 1.875 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2014 and 2015, 1.67 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage years 2016 through 2025, 1.5 percent of the emission allowances established for each year under section 721(a).

"(4) For vintage year 2026, 1.2 percent of the emission allowances established for that year under section 721(a).

"(5) For vintage year 2027, 0.9 percent of the emission allowances established for that year under section 721(a).

"(6) For vintage year 2028, 0.6 percent of the emission allowances established for that year under section 721(a).

"(7) For vintage year 2029, 0.3 percent of the emission allowances established for that year under section 721(a).

"(d) LOW INCOME CONSUMERS.—For each vintage year starting in 2012, the Administrator shall auction, pursuant to section 791, 15 percent of the emission allowances established for each year under section 721(a), with

the proceeds used for the benefit of low income consumers to fund the program set forth in subtitle C of title IV of American Clean Energy and Security Act of 2009 and the amendments made thereby.

"(e) TRADE-VULNERABLE INDUSTRIES.—

"(1) IN GENERAL.—The Administrator shall allocate emission allowances to energy-intensive, trade-exposed entities, to be distributed in accordance with section 765, in the following amounts:

"(A) For vintage years 2012 and 2013, up to 2.0 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage year 2014, up to 15 percent of the emission allowances established for that year under section 721(a).

"(C) For vintage year 2015, up to the product of—

"(i) the amount specified in paragraph (2); multiplied by

"(ii) the quantity of emission allowances established for 2015 under section 721(a) divided by the quantity of emission allowances established for 2014 under section 721(a).

"(D) For vintage year 2016, up to the product of—

"(i) the amount specified in paragraph (3); multiplied by

"(ii) the quantity of emission allowances established for 2015 under section 721(a) divided by the quantity of emission allowances established for 2014 under section 721(a).

"(E) For vintage years 2017 through 2025, up to the product of—

"(i) the amount specified in paragraph (4); multiplied by

"(ii) the quantity of emission allowances established for that year under section 721(a) divided by the quantity of emission allowances established for 2016 under section 721(a).

"(F) For vintage years 2026 through 2050, up to the product of the amount specified in paragraph (4)—

"(i) multiplied by the quantity of emission allowances established for the applicable year during 2026 through 2050 under section 721(a) divided by the quan-

tity of emission allowances established for 2016 under section 721(a); and

"(ii) multiplied by a factor that shall equal 90 percent for 2026 and decline 10 percent for each year thereafter until reaching zero, except that, if the President modifies a percentage for a year under subparagraph (A) of section 767(c)(3), the highest percentage the President applies for any sector under that subparagraph for that year (not exceeding 100 percent) shall be used for that year instead of the factor otherwise specified in this clause.

"(2) CARRYOVER.—After the Administrator distributes emission allowances pursuant to section 765 for any given vintage year, any emission allowances allocated to energy-intensive, trade-exposed entities pursuant to this subsection that have not been so distributed shall, in accordance with subsection (s), be exchanged for allowances from the following vintage year and treated as part of the allocation to such entities for that later vintage year.

"(f) DEPLOYMENT OF CARBON CAPTURE AND SEQUESTRATION TECHNOLOGY.—

"(1) ANNUAL ALLOCATION.—The Administrator shall allocate emission allowances for the deployment of carbon capture and sequestration technology to be distributed in accordance with section 786 in the following amounts:

"(A) For vintage years 2014 through 2017, 1.75 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2018 and 2019, 4.75 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2020 through 2050, 5 percent of the emission allowances established for each year under section 721(a).

"(2) CARRYOVER.—If the Administrator has not distributed all of the allowances allocated pursuant to this subsection for a given vintage year by the end of that year, all such undistributed emission allowances shall, in accordance with subsection (s), be exchanged for allowances from the following vintage year and treated as part of the allocation for the deployment of carbon capture and sequestration technology under this subsection for that later vintage year.

"(g) INVESTMENT IN ENERGY EFFICIENCY AND RENEWABLE ENERGY.—The Administrator shall allocate emission allowances to invest in energy efficiency and renewable energy as follows:

"(1) To be distributed in accordance with section 132 of the American Clean Energy and Security Act of 2009 in the following amounts:

"(A) For vintage years 2012 through 2015, 9.5 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2016 through 2017, 6.5 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2018 through 2021, 5.5 percent of the emission allowances established for each year under section 721(a).

"(D) For vintage years 2022 through 2025, 1.0 percent of the emission allowances established for each year under section 721(a).

"(E) For vintage years 2026 through 2050, 4.5 percent of the emission allowances established for each year under section 721(a).

"(F) At the same time allowances are distributed under subparagraph (D) for each of the vintage years 2022 through 2025, 3.55 per-

cent of emission allowances established under section 721(a) for the vintage year four years after that vintage year shall also be distributed (which shall be in addition to the emission allowances distributed under subparagraph (E)).

"(2) To be distributed in accordance with section 304 of the Energy Conservation and Production Act, as amended by section 201 of the American Clean Energy and Security Act of 2009, for each vintage year from 2012 through 2050, 0.5 percent of emission allowances established for that year under section 721(a).

"(h) ENERGY RESEARCH AND DEVELOPMENT.—

"(1) ENERGY INNOVATION HUBS.—For vintage years 2012 through 2050, the Administrator shall allocate 0.45 percent of the emission allowances established under section 721(a) to be distributed to Energy Innovation Hubs in accordance with section 171 of the American Clean Energy and Security Act of 2009.

"(2) ADVANCED ENERGY RESEARCH.—For vintage years 2012 through 2050, the Administrator shall allocate 1.05 percent of the emission allowances established under section 721(a) for the Advanced Research Project Agency-Energy to be distributed in

accordance with section 172 of the American Clean Energy and Security Act of 2009.

"(i) INVESTMENT IN CLEAN VEHICLE TECHNOLOGY.—The Administrator shall allocate emission allowances to invest in the development and deployment of clean vehicles, to be distributed in accordance with section 124 of the American Clean Energy and Security Act of 2009 in the following amounts:

"(1) For vintage years 2012 through 2017, 3 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2018 through 2025, 1 percent of the emission allowances established for each year under section 721(a).

"(j) DOMESTIC FUEL PRODUCTION.—For vintage years 2014 through 2026, the Administrator shall allocate and distribute according to section 787—

"(1) 2 percent of the emission allowances established for each year under section 721(a) to domestic petroleum refineries that are covered entities pursuant to section 700(13)(F)(viii), including small business refiners; and

"(2) an additional 0.25 percent of the emissions allowances established for each year under section

721(a) to small business refiners that are covered entities pursuant to section 700(13)(F)(viii).

"(k) INVESTMENT IN WORKERS.—The Administrator shall auction pursuant to section 791 emission allowances for the benefit of workers pursuant to part 2 of subtitle B of the American Clean Energy and Security Act of 2009 in the following amounts, and shall deposit into the Climate Change Worker Adjustment Assistance Fund established pursuant to section 793, and report to the Secretary of Labor on, the proceeds from the sale of these allowances:

"(1) For vintage years 2012 through 2021, 0.5 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2022 through 2050, 1.0 percent of the emission allowances established for each year under section 721(a).

All amounts deposited into the fund shall be available to the Secretary of Labor until expended to carry out part 2 of subtitle B of title IV of the American Clean Energy and Security Act of 2009. Of the amounts deposited, not more than $10,000,000 shall be available to the Secretary of Labor for Federal administration costs of such part 2 each fiscal year.

"(l) DOMESTIC ADAPTATION.—The Administrator shall allocate emission allowances for domestic adaptation as follows:

"(1) To be distributed in accordance with section 453 of the American Clean Energy and Security Act of 2009 in the following amounts:

"(A) For vintage years 2012 through 2021, 0.9 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2022 through 2026, 1.9 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2027 through 2050, 3.9 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage year 2012 and thereafter, the Administrator shall auction, pursuant to section 791, 0.1 percent of the emission allowances established for each year under section 721(a), and shall deposit the proceeds in the Climate Change Health Protection and Promotion Fund established by section 467 of the American Clean Energy and Security Act of 2009.

"(m) WILDLIFE AND NATURAL RESOURCE ADAPTATION.—The Administrator shall allocate emission allow-

ances for wildlife and natural resource adaptation as follows:

"(1) To be distributed to State agencies in accordance with section 480(a) of the American Clean Energy and Security Act of 2009 in the following amounts:

"(A) For vintage years 2012 through 2021, 0.385 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2022 through 2026, 0.77 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2027 through 2050, 1.54 percent of the emission allowances established for each year under section 721(a).

"(2) To be auctioned pursuant to section 791, with the proceeds to be deposited in the Natural Resources Climate Change Adaptation Fund established pursuant to section 480(b), in the following amounts:

"(A) For vintage years 2012 through 2021, 0.615 percent of the emission allowances established for each year under section 721(a).

"(B) For vintage years 2022 through 2026, 1.23 percent of the emission allowances established for each year under section 721(a).

"(C) For vintage years 2027 through 2050, 2.46 percent of the emission allowances established for each year under section 721(a).

"(n) INTERNATIONAL ADAPTATION.—The Administrator shall allocate emission allowances for international adaptation to be distributed in accordance with part 2 of subtitle E of title IV of the American Clean Energy and Security Act of 2009 in the following amounts:

"(1) For vintage years 2012 through 2021, 1.0 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2022 through 2026, 2.0 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage years 2027 through 2050, 4.0 percent of the emission allowances established for each year under section 721(a).

"(o) INTERNATIONAL CLEAN TECHNOLOGY DEPLOYMENT.—The Administrator shall allocate emission allowances for international clean technology deployment for distribution in accordance with subtitle D of title IV of

the American Clean Energy and Security Act of 2009 in the following amounts:

"(1) For vintage years 2012 through 2021, 1.0 percent of the emission allowances established for each year under section 721(a).

"(2) For vintage years 2022 through 2026, 2.0 percent of the emission allowances established for each year under section 721(a).

"(3) For vintage years 2027 through 2050, 4.0 percent of the emission allowances established for each year under section 721(a).

"(p) RELEASE OF FUTURE ALLOWANCES.—The Administrator shall make future year allowances available by auctioning allowances, pursuant to section 791, in the following amounts:

"(1) In each of calendar years 2014 through 2019, a string of 0.70 billion allowances with vintage years 12 to 17 years after the year of the auction, with an equal number of allowances from each vintage year in the string.

"(2) In each of calendar years 2020 through 2025, a string of 0.50 billion allowances with vintage years 12 to 17 years after the year of the auction, with an equal number of allowances from each vintage year in the string.

"(3) In each of calendar years 2026 through 2030, a string of 0.3 billion allowances with vintage years 12 to 17 years after the year of the auction, with an equal number of allowances from each vintage year in the string.

"(q) DEFICIT REDUCTION.—

"(1) For each of vintage years 2012 through 2025, any allowances not allocated for distribution or auction pursuant to section 781 or subsections (a) through (o) of this section, or disbursed pursuant to section 790, shall be auctioned by the Administrator pursuant to section 791 and the proceeds shall be deposited into the Treasury.

"(2) Unless otherwise specified, any allowances allocated pursuant to subsections (a) through (o) and not distributed by March 31 of the calendar year following the allowance's vintage year, shall be auctioned by the Administrator and the proceeds shall be deposited into the Treasury.

"(3) For auctions conducted through calendar year 2020 pursuant to subsection (p), the auction proceeds shall be deposited into the Treasury.

"(r) CLIMATE CHANGE CONSUMER REFUND.—

"(1) For each of vintage years 2026 through 2050, the Administrator shall auction the following

allowances established under section 721(a) and deposit the proceeds into the Climate Change Consumer Refund Account:

"(A) Any allowances not allocated for distribution or auction pursuant to section 781 or subsections (a) through (p) of this section, or disbursed pursuant to section 790.

"(B) Unless otherwise specified, any allowances allocated pursuant to subsections (a) through (o) and not distributed by March 31 of the calendar year following the allowance's vintage year.

"(2) For auctions conducted pursuant to subsection (p) in calendar years 2021 and thereafter, the Administrator shall place the proceeds from the sales of the these allowances into the Climate Change Consumer Refund Account.

"(3) Funds deposited into the Climate Change Consumer Refund Account shall be used as specified in section 789 and shall be available for expenditure, without further appropriation or fiscal year limitation.

"(s) TREATMENT OF CARRYOVER ALLOWANCES.—

"(1) IN GENERAL.—If there are undistributed allowances from a vintage year for supplemental re-

ductions pursuant to section 781(c), energy-intensive, trade-exposed industries pursuant to subsection (e)(2) of this section, or deployment of carbon capture and sequestration technology pursuant to subsection (f)(2) of this section, the Administrator shall—

"(A) use the undistributed allowances to increase for the same vintage year—

"(i) the allocation of allowances to be auctioned for deficit reduction pursuant to subsection (q) or for consumer refunds pursuant to subsection (r);

"(ii) the allocation of allowances to be auctioned for low income consumers pursuant to subsection (d); or

"(iii) a combination of both; and

"(B) except as provided in paragraph (2)—

"(i) decrease by the same amount for the following vintage year the allocation for the purpose for which the allocation was increased pursuant to subparagraph (A); and

"(ii) increase by the same amount for the following vintage year the allocation for

the purpose for which the undistributed allowances were originally allocated.

"(2) EXCESS UNDISTRIBUTED ALLOWANCES.—(A) For each vintage year for which this subsection applies, the Administrator shall determine whether—

"(i) the total quantity of undistributed allowances for that vintage year that were allocated pursuant to section 781(c), and subsections (e)(2) and (f)(2) of this section, exceeds

"(ii) the total quantity of allowances allocated pursuant to subsection (d), (q) and (r) for the following vintage year, decreased by the quantity of allowances for that following vintage year set aside for the reserve established by section 791(f).

"(B) If the Administrator determines under subparagraph (A) that the quantity described in subparagraph (A)(i) exceeds the quantity described in subparagraph (A)(ii), paragraph (1)(B)(ii) of this subsection shall not apply. Instead, for each purpose described in section 781(c), or subsections (e)(2) or (f)(2) of this section for which undistributed allowances for a given vintage year were allocated, the

Administrator shall increase the allocation for the following vintage year by the amount that is the product of—

"(i) the number of undistributed allowances for that purpose, times

"(ii) the quantity described in subparagraph (A)(ii) divided by the quantity described in subparagraph (A)(i).

"SEC. 783. ELECTRICITY CONSUMERS.

"(a) DEFINITIONS.—For purposes of this section:

"(1) COAL-FUELED UNIT.—The term 'coal-fueled unit' means a utility unit that derives at least 85 percent of its heat input from coal, petroleum coke, or any combination of these 2 fuels.

"(2) ELECTRICITY LOCAL DISTRIBUTION COMPANY.—The term 'electricity local distribution company' means an electric utility—

"(A) that has a legal, regulatory, or contractual obligation to deliver electricity directly to retail consumers in the United States, regardless of whether that entity or another entity sells the electricity as a commodity to those retail consumers; and

"(B) the retail rates of which, except in the case of an electric cooperative, are regulated or set by—

"(i) a State regulatory authority;

"(ii) a State or political subdivision thereof (or an agency or instrumentality of, or corporation wholly owned by, either of the foregoing); or

"(iii) an Indian tribe pursuant to tribal law.

"(3) ELECTRICITY SAVINGS; RENEWABLE ENERGY RESOURCE.—The terms 'electricity savings' and 'renewable energy resource' shall have the meaning given those terms in section 610 of the Public Utility Regulatory Policies Act of 1978 (as added by section 101 of the American Clean Energy and Security Act of 2009).

"(4) INDEPENDENT POWER PRODUCTION FACILITY.—The term 'independent power production facility' means a facility—

"(A) that is used for the generation of electric energy, at least 80 percent of which is sold at wholesale; and

"(B) the sales of the output of which are not subject to retail rate regulation or setting of retail rates by—

"(i) a State regulatory authority;

"(ii) a State or political subdivision thereof (or an agency or instrumentality of, or corporation wholly owned by, either of the foregoing);

"(iii) an electric cooperative; or

"(iv) an Indian tribe pursuant to tribal law.

"(5) LONG-TERM CONTRACT GENERATOR.—The term 'long-term contract generator' means a qualifying small power production facility, a qualifying cogeneration facility), an independent power production facility, or a facility for the production of electric energy for sale to others that is owned and operated by an electric cooperative that is—

"(A) a covered entity; and

"(B) as of the date of enactment of this title—

"(i) a facility with 1 or more sales or tolling agreements executed before March 1, 2007, that govern the facility's electricity sales and provide for sales at a price

(whether a fixed price or a price formula) for electricity that does not allow for recovery of the costs of compliance with the limitation on greenhouse gas emissions under this title, provided that such agreements are not between entities that are affiliates of one another; or

"(ii) a facility consisting of 1 or more cogeneration units that makes useful thermal energy available to an industrial or commercial process with 1 or more sales agreements executed before March 1, 2007, that govern the facility's useful thermal energy sales and provide for sales at a price (whether a fixed price or price formula) for useful thermal energy that does not allow for recovery of the costs of compliance with the limitation on greenhouse gas emissions under this title, provided that such agreements are not between entities that are affiliates of one another.

"(6) MERCHANT COAL UNIT.—The term 'merchant coal unit' means a coal-fueled unit that—

"(A) is or is part of a covered entity;

"(B) is not owned by a Federal, State, or regional agency or power authority; and

"(C) generates electricity solely for sale to others, provided that all or a portion of such sales are made by a separate legal entity that—

"(i) has a full or partial ownership or leasehold interest in the unit, as certified in accordance with such requirements as the Administrator shall prescribe; and

"(ii) is not subject to retail rate regulation or setting of retail rates by—

"(I) a State regulatory authority;

"(II) a State or political subdivision thereof (or an agency or instrumentality of, or corporation wholly owned by, either of the foregoing);

"(III) an electric cooperative; or

"(IV) an Indian tribe pursuant to tribal law.

"(7) MERCHANT COAL UNIT SALES.—The term 'merchant coal unit sales' means sales to others of electricity generated by a merchant coal unit that are made by the owner or leaseholder described in paragraph (6)(C).

"(8) NEW COAL-FUELED UNIT.—The term 'new coal-fueled unit' means a coal-fueled unit that commenced operation on or after January 1, 2009 and before September 30, 2012.

"(9) NEW MERCHANT COAL UNIT.—The term 'new merchant coal unit' means a merchant coal unit—

"(A) that commenced operation on or after January 1, 2009 and before September 30, 2012; and

"(B) the actual, on-site construction of which commenced prior to January 1, 2009.

"(10) QUALIFYING SMALL POWER PRODUCTION FACILITY; QUALIFYING COGENERATION FACILITY.—The terms 'qualifying small power production facility' and 'qualifying cogeneration facility' have the meanings given those terms in section 3(17)(C) and 3(18)(B) of the Federal Power Act (16 U.S.C. 796(17)(C) and 796(18)(B)).

"(11) SMALL LDC.—The term 'small LDC' means, for any given year, an electricity local distribution company that delivered less than 4,000,000 megawatt hours of electric energy directly to retail consumers in the preceding year.

"(12) STATE REGULATORY AUTHORITY.—The term 'State regulatory authority' has the meaning given that term in section 3(17) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(17)).

"(13) USEFUL THERMAL ENERGY.—The term 'useful thermal energy'has the meaning given that term in section 371(7) of the Energy Policy and Conservation Act (42 U.S.C. 6341(7)).

"(b) ELECTRICITY LOCAL DISTRIBUTION COMPANIES.—

"(1) DISTRIBUTION OF ALLOWANCES.—Not later than September 30 of 2011 and each calendar year thereafter through 2028, the Administrator shall distribute to electricity local distribution companies for the benefit of retail ratepayers the quantity of emission allowances allocated for the following vintage year pursuant to section 782(a)(1). Notwithstanding the preceding sentence, the Administrator shall withhold from distribution under this subsection a quantity of emission allowances equal to the lesser of 14.3 percent of the quantity of emission allowances allocated under section 782(a)(1) for the relevant vintage year, or 105 percent of the emission allowances for the relevant vintage year that the Ad-

ministrator anticipates will be distributed to merchant coal units and to long-term contract generators, respectively, under subsections (c) and (d). If not required by subsections (c) and (d) to distribute all of these reserved allowances, the Administrator shall distribute any remaining emission allowances to electricity local distribution companies in accordance with this subsection.

"(2) DISTRIBUTION BASED ON EMISSIONS.—

"(A) IN GENERAL.—For each vintage year, 50 percent of the emission allowances available for distribution under paragraph (1), after reserving allowances for distribution under subsections (c) and (d), shall be distributed by the Administrator among individual electricity local distribution companies ratably based on the annual average carbon dioxide emissions attributable to generation of electricity delivered at retail by each such company during the base period determined under subparagraph (B).

"(B) BASE PERIOD.—

"(i) VINTAGE YEARS 2012 AND 2013.—For vintage years 2012 and 2013, an electricity local distribution company's base period shall be—

"(I) calendar years 2006 through 2008; or

"(II) any 3 consecutive calendar years between 1999 and 2008, inclusive, that such company selects, provided that the company timely informs the Administrator of such selection.

"(ii) VINTAGE YEARS 2014 AND THEREAFTER.—For vintage years 2014 and thereafter, the base period shall be—

"(I) the base period selected under clause (i); or

"(II) calendar year 2012, in the case of an electricity local distribution company that owns, co-owns, or purchases through a power purchase agreement (whether directly or through a cooperative arrangement) a substantial portion of the electricity generated by a new coal-fueled unit, provided that such company timely informs the Administrator of its election to use 2012 as its base period.

"(C) DETERMINATION OF EMISSIONS.—

"(i) DETERMINATION FOR 1999-2008.—As part of the regulations promulgated pursuant to subsection (f), the Administrator, after consultation with the Energy Information Administration, shall determine the average amount of carbon dioxide emissions attributable to generation of electricity delivered at retail by each electricity local distribution company for each of the years 1999 through 2008, taking into account entities' electricity generation, electricity purchases, and electricity sales. In the case of any electricity local distribution company that owns, co-owns, or purchases through a power purchase agreement (whether directly or through a cooperative arrangement) a substantial portion of the electricity generated by, a coal-fueled unit that commenced operation after January 1, 2006 and before December 31, 2008, the Administrator shall adjust the emissions attributable to such company's retail deliveries in calendar years 2006 through 2008 to reflect the emissions that would have occurred if the

relevant unit were in operation during the entirety of such 3-year period.

"(ii) ADJUSTMENTS FOR NEW COAL-FUELED UNITS.—

"(I) VINTAGE YEARS 2012 AND 2013.—For purposes of emission allowance distributions for vintage years 2012 and 2013, in the case of any electricity local distribution company that owns, co-owns, or purchases through a power purchase agreement (whether directly or through a cooperative arrangement) a substantial portion of the electricity generated by, a new coal-fueled unit, the Administrator shall adjust the emissions attributable to such company's retail deliveries in the applicable base period to reflect the emissions that would have occurred if the new coal-fueled unit were in operation during such period.

"(II) VINTAGE YEAR 2014 AND THEREAFTER.—Not later than necessary for use in making emission al-

lowance distributions under this subsection for vintage year 2014, the Administrator shall, for any electricity local distribution company that owns, co-owns, or purchases through a power purchase agreement (whether directly or through a cooperative arrangement) a substantial portion of the electricity generated by a new coal-fueled unit and has selected calendar year 2012 as its base period pursuant to subparagraph (B)(ii)(II), determine the amount of carbon dioxide emissions attributable to generation of electricity delivered at retail by such company in calendar year 2012. If the relevant new coal-fueled unit was not yet operational by January 1, 2012, the Administrator shall adjust such determination to reflect the emissions that would have occurred if such unit were in operation for all of calendar year 2012.

"(iii) REQUIREMENTS.—Determinations under this paragraph shall be as pre-

cise as practicable, taking into account the nature of data currently available and the nature of markets and regulation in effect in various regions of the country. The following requirements shall apply to such determinations:

"(I) The Administrator shall determine the amount of fossil fuel-based electricity delivered at retail by each electricity local distribution company, and shall use appropriate emission factors to calculate carbon dioxide emissions associated with the generation of such electricity.

"(II) Where it is not practical to determine the precise fuel mix for the electricity delivered at retail by an individual electricity local distribution company, the Administrator may use the best available data, including average data on a regional basis with reference to Regional Transmission Organizations or regional entities (as that term is defined in section 215(a)(7) of the Federal Power Act

(16 U.S.C. 824o(a)(7)), to estimate fuel mix and emissions. Different methodologies may be applied in different regions if appropriate to obtain the most accurate estimate.

"(3) DISTRIBUTION BASED ON DELIVERIES.—

"(A) INITIAL FORMULA.—Except as provided in subparagraph (B), for each vintage year, the Administrator shall distribute 50 percent of the emission allowances available for distribution under paragraph (1), after reserving allowances for distribution under subsections (c) and (d), among individual electricity local distribution companies ratably based on each electricity local distribution company's annual average retail electricity deliveries for calendar years 2006 through 2008, unless the owner or operator of the company selects 3 other consecutive years between 1999 and 2008, inclusive, and timely notifies the Administrator of its selection.

"(B) UPDATING.—Prior to distributing 2015 vintage year emission allowances under this paragraph and at 3-year intervals thereafter, the Administrator shall update the dis-

tribution formula under this paragraph to reflect changes in each electricity local distribution company's service territory since the most recent formula was established. For each successive 3-year period, the Administrator shall distribute allowances ratably among individual electricity local distribution companies based on the product of—

"(i) each electricity local distribution company's average annual deliveries per customer during calendar years 2006 through 2008, or during the 3 alternative consecutive years selected by such company under subparagraph (A); and

"(ii) the number of customers of such electricity local distribution company in the most recent year in which the formula is updated under this subparagraph.

"(4) PROHIBITION AGAINST EXCESS DISTRIBUTIONS.—The regulations promulgated under subsection (f) shall ensure that, notwithstanding paragraphs (2) and (3), no electricity local distribution company shall receive a greater quantity of allowances under this subsection than is necessary to offset any increased electricity costs to such company's

retail ratepayers, including increased costs attributable to purchased power costs, due to enactment of this title. Any emission allowances withheld from distribution to an electricity local distribution company pursuant to this paragraph shall be distributed among all remaining electricity local distribution companies ratably based on emissions pursuant to paragraph (2).

"(5) USE OF ALLOWANCES.—

"(A) RATEPAYER BENEFIT.—Emission allowances distributed to an electricity local distribution company under this subsection shall be used exclusively for the benefit of retail ratepayers of such electricity local distribution company and may not be used to support electricity sales or deliveries to entities or persons other than such ratepayers.

"(B) RATEPAYER CLASSES.—In using emission allowances distributed under this subsection for the benefit of ratepayers, an electricity local distribution company shall ensure that ratepayer benefits are distributed—

"(i) among ratepayer classes ratably based on electricity deliveries to each class; and

"(ii) equitably among individual ratepayers within each ratepayer class, including entities that receive emission allowances pursuant to part F.

"(C) LIMITATION.—In general, an electricity local distribution company shall not use the value of emission allowances distributed under this subsection to provide to any ratepayer a rebate that is based solely on the quantity of electricity delivered to such ratepayer. To the extent an electricity local distribution company uses the value of emission allowances distributed under this subsection to provide rebates, it shall, to the maximum extent practicable, provide such rebates with regard to the fixed portion of ratepayers' bills or as a fixed credit or rebate on electricity bills.

"(D) INDUSTRIAL RATEPAYERS.—Notwithstanding subparagraph (C), if compliance with the requirements of this title results (or would otherwise result) in an increase in electricity costs for industrial retail ratepayers of any given electricity local distribution company (including entities that receive emission allowances

pursuant to part F), such electricity local distribution company—

"(i) shall pass through to industrial retail ratepayers their ratable share (based on deliveries to each ratepayer class) of the value of the emission allowances distributed to such company under this subsection, to reduce electricity cost impacts on such ratepayers; and

"(ii) may do so based on the quantity of electricity delivered to individual industrial retail ratepayers.

"(E) GUIDELINES.—As part of the regulations promulgated under subsection (f), the Administrator shall, after consultation with State regulatory authorities, prescribe guidelines for the implementation of the requirements of this paragraph. Such guidelines shall include requirements to ensure that industrial retail ratepayers (including entities that receive emission allowances under part F) receive their ratable share of the value of the allowances distributed to each electricity local distribution company pursuant to this subsection.

"(6) REGULATORY PROCEEDINGS.—

"(A) REQUIREMENT.—No electricity local distribution company shall be eligible to receive emission allowances under this subsection or subsection (e) unless the State regulatory authority with authority over such company's retail rates, or the entity with authority to regulate or set retail electricity rates of an electricity local distribution company not regulated by a State regulatory authority, has—

"(i) after public notice and an opportunity for comment, promulgated a regulation or completed a rate proceeding (or the equivalent, in the case of a ratemaking entity other than a State regulatory authority) that provides for the full implementation of the requirements of paragraph (5) of this subsection and the requirements of subsection (e); and

"(ii) made available to the Administrator and the public a report describing, in adequate detail, the manner in which the requirements of paragraph (5) and the requirements of subsection (e) will be implemented.

"(B) UPDATING.—The Administrator shall require, as a condition of continued receipt of emission allowances under this subsection by an electricity local distribution company, that a new regulation be promulgated or rate proceeding be completed , after public notice and an opportunity for comment, and a new report be made available to the Administrator and the public, pursuant to subparagraph (A), not less frequently than every 5 years.

"(7) PLANS AND REPORTING.—

"(A) REGULATIONS.—As part of the regulations promulgated under subsection (f), the Administrator shall prescribe requirements governing plans and reports to be submitted in accordance with this paragraph.

"(B) PLANS.—Not later than April 30 of 2011 and every 5 years thereafter through 2026, each electricity local distribution company shall submit to the Administrator a plan, approved by the State regulatory authority or other entity charged with regulating tor setting the retail rates of such company, describing such company's plans for the disposition of the value of emission allowances to be received pur-

suant to this subsection and subsection (e), in accordance with the requirements of this subsection and subsection (e). Such plan shall include a description of the manner in which the company will provide to industrial retail ratepayers (including entities that receive emission allowances under part F) their ratable share of the value of such allowances.

"(C) REPORTS.—Not later than June 30 of 2013 and each calendar year thereafter through 2031, each electricity local distribution company shall submit a report to the Administrator, and to the relevant State regulatory authority or other entity charged with regulating or setting the retail electricity rates of such company, describing the disposition of the value of any emission allowances received by such company in the prior calendar year pursuant to this subsection and subsection (e), including—

"(i) a description of sales, transfer, exchange, or use by the company for compliance with obligations under this title, of any such emission allowances;

"(ii) the monetary value received by the company, whether in money or in some

other form, from the sale, transfer, or exchange of any such emission allowances;

"(iii) the manner in which the company's disposition of any such emission allowances complies with the requirements of this subsection and of subsection (e), including each of the requirements of paragraph (5) of this subsection, including the requirement that industrial retail ratepayers (including entities that receive emission allowances under part F) receive their ratable share of the value of such allowances; and

"(iv) such other information as the Administrator may require pursuant to subparagraph (A).

"(D) PUBLICATION.—The Administrator shall make available to the public all plans and reports submitted under this subsection, including by publishing such plans and reports on the Internet.

"(8) AUDITS.—Each year, the Administrator shall audit a representative sample of electricity local distribution companies to ensure that emission allowances distributed under this subsection have been

used exclusively for the benefit of retail ratepayers and that such companies are complying with the requirements of this subsection and of subsection (e), including the requirement that industrial retail ratepayers (including entities that receive emission allowances under part F) receive their ratable share of the value of such allowances. In selecting companies for audit, the Administrator shall take into account any credible evidence of noncompliance with such requirements. The Administrator shall make available to the public a report describing the results of each such audit, including by publishing such report on the Internet.

"(9) ENFORCEMENT.—A violation of any requirement of this subsection or of subsection (e) shall be a violation of this Act. Each emission allowance the value of which is used in violation of the requirements of this subsection or of subsection (e) shall be a separate violation.

"(c) MERCHANT COAL UNITS.—

"(1) QUALIFYING EMISSIONS.—The qualifying emissions for a merchant coal unit for a given calendar year shall be the product of the number of megawatt hours of merchant coal unit sales generated by such unit in such calendar year and the

average carbon dioxide emissions per megawatt hour generated by such unit during the base period under paragraph (2), provided that the number of megawatt hours in a given calendar year for purposes of such calculation shall be reduced in proportion to the portion of such unit's carbon dioxide emissions that are either—

"(A) captured and sequestered in such calendar year; or

"(B) attributable to the combustion or gasification of biomass, to the extent that the owner or operator of the unit is not required to hold emission allowances for such emissions.

"(2) BASE PERIOD.—For purposes of this subsection, the base period for a merchant coal unit shall be—

"(A) calendar years 2006 through 2008; or

"(B) in the case of a new merchant coal unit—

"(i) the first full calendar year of operation of such unit, provided that such year shall not be any year after calendar year 2012; or

"(ii) calendar year 2012, if such unit commences operation on or after January 1, 2012.

"(3) PHASE-DOWN SCHEDULE.—The Administrator shall identify an annual phase-down factor, applicable to distributions to merchant coal units for each of vintage years 2012 through 2029, that corresponds to the overall decline in the amount of emission allowances allocated to the electricity sector in such years pursuant to section 782(a)(1). Such factor shall—

"(A) for vintage year 2012, be equal to 1.0;

"(B) for each of vintage years 2013 through 2029, correspond to the quotient of—

"(i) the quantity of emission allowances allocated under section 782(a)(1) for such vintage year; divided by

"(ii) the quantity of emission allowances allocated under section 782(a)(1) for vintage year 2012.

"(4) DISTRIBUTION OF EMISSION ALLOWANCES.—Not later than March 1 of 2013 and each calendar year through 2030, the Administrator shall distribute emission allowances of the preceding vin-

tage year to the owner or operator of each merchant coal unit described in subsection (a)(6)(C) in an amount equal to the product of—

"(A) 0.5;

"(B) the qualifying emissions for such merchant coal unit for the preceding year, as determined under paragraph (1); and

"(C) the phase-down factor for the preceding calendar year, as identified under paragraph (3).

"(5) ADJUSTMENT.—

"(A) STUDY.—Not later than July 1, 2014, the Administrator, in consultation with the Federal Energy Regulatory Commission, shall complete a study to determine whether the allocation formula under paragraph (3) is resulting in, or is likely to result in, windfall profits to merchant coal generators or substantially disparate treatment of merchant coal generators operating in different markets or regions.

"(B) REGULATION.—If the Administrator, in consultation with the Federal Energy Regulatory Commission, makes an affirmative finding of windfall profits or disparate treatment under subparagraph (A), the Administrator

shall, not later than 18 months after the completion of the study described in subparagraph (A), promulgate regulations providing for the adjustment of the allocation formula under paragraph (3) to mitigate, to the extent practicable, such windfall profits, if any, and such disparate treatment, if any.

"(6) LIMITATION ON ALLOWANCES.—Notwithstanding paragraph (4) or (5), for each vintage year the Administrator shall distribute under this subsection no more than 10 percent of the total quantity of emission allowances available for such vintage year for distribution to the electricity sector under section 782(a)(1). If the quantity of emission allowances that would otherwise be distributed pursuant to paragraph (4) or (5) for any vintage year would exceed such limit, the Administrator shall distribute 10 percent of the total emission allowances available for distribution under section 782(a)(1) for such vintage year ratably among merchant coal generators based on the applicable formula under paragraph (4) or (5).

"(7) ELIGIBILITY.—The owner or operator of a merchant coal unit shall not be eligible to receive emission allowances under this subsection for any

vintage year for which such owner or operator has elected to receive emission allowances for the same unit under subsection (d).

"(d) LONG-TERM CONTRACT GENERATORS.—

"(1) DISTRIBUTION.—Not later than March 1 of 2013 and each calendar year through 2030, the Administrator shall distribute to the owner or operator of each long-term contract generator a quantity of emission allowances of the preceding vintage year that is equal to the sum of—

"(A) the number of tons of carbon dioxide emitted as a result of a qualifying electricity sales agreement referred to in subsection (a)(5)(B)(i); and

"(B) the incremental number of tons of carbon dioxide emitted solely as a result of a qualifying thermal sales agreement referred to in subsection (a)(5)(B)(ii), provided that in no event shall the Administrator distribute more than 1 emission allowance for the same ton of emissions.

"(2) LIMITATION ON ALLOWANCES.— Notwithstanding paragraph (1), for each vintage year the Administrator shall distribute under this subsection no more than 4.3 percent of the total quantity of

emission allowances available for such vintage year for distribution to the electricity sector under section 782(a)(1). If the quantity of emission allowances that would otherwise be distributed pursuant to paragraph (1) for any vintage year would exceed such limit, the Administrator shall distribute 4.3 percent of the total emission allowances available for distribution under section 782(a)(1) for such vintage year ratably among long-term contract generators based on paragraph (1).

"(3) ELIGIBILITY.—

"(A) FACILITY ELIGIBILITY.—The owner or operator of a facility shall cease to be eligible to receive emission allowances under this subsection upon the earliest date on which the facility no longer meets each and every element of the definition of a long-term contract generator under subsection (a)(5).

"(B) CONTRACT ELIGIBILITY.—The owner or operator of a facility shall cease to be eligible to receive emission allowances under this subsection based on an electricity or thermal sales agreement referred to in subsection (a)(5)(B) upon the earliest date that such agreement—

"(i) expires;

"(ii) is terminated; or

"(iii) is amended in any way that changes the location of the facility, the price (whether a fixed price or price formula) for electricity or thermal energy sold under such agreement, the quantity of electricity or thermal energy sold under the agreement, or the expiration or termination date of the agreement.

"(4) DEMONSTRATION OF ELIGIBILITY.—To be eligible to receive allowance distributions under this subsection, the owner or operator of a long-term contract generator shall submit each of the following in writing to the Administrator within 180 days after the date of enactment of this title, and not later than September 30 of each vintage year for which such generator wishes to receive emission allowances:

"(A) A certificate of representation described in section 700(15).

"(B) An identification of each owner and each operator of the facility.

"(C) An identification of the units at the facility and the location of the facility.

"(D) A written certification by the designated representative that the facility meets all the requirements of the definition of a long-term contract generator.

"(E) The expiration date of each qualifying electricity or thermal sales agreement referred to in subsection (a)(5)(B).

"(F) A copy of each qualifying electricity or thermal sales agreement referred to in subsection (a)(5)(B).

"(5) NOTIFICATION.—Not later than 30 days after, in accordance with paragraph (3), a facility or an agreement ceases to meet the eligibility requirements for distribution of emission allowances pursuant to this subsection, the designated representative of such facility shall notify the Administrator in writing when, and on what basis, such facility or agreement ceased to meet such requirements.

"(e) SMALL LDCS.—

"(1) DISTRIBUTION.—Not later than September 30 of each calendar year from 2011 through 2028, the Administrator shall, in accordance with this subsection, distribute emission allowances allocated pursuant to section 782(a)(2) for the following vintage year. Such allowances shall be distributed

ratably among small LDCs based on historic emissions in accordance with the same measure of such emissions applied to each such small LDC for the relevant vintage year under subsection (b)(2) of this section.

"(2) USES.—A small LDC receiving allowances under this section shall use such allowances exclusively for the following purposes:

"(A) Cost-effective programs to achieve electricity savings, provided that such savings shall not be transferred or used for compliance with section 610 of the Public Utility Regulatory Policies Act of 1978.

"(B) Deployment of technologies to generate electricity from renewable energy resources, provided that any Federal renewable electricity credits issued based on generation supported under this section shall be submitted to the Federal Energy Regulatory Commission for voluntary retirement and shall not be used for compliance with section 610 of the Public Utility Regulatory Policies Act of 1978.

"(C) Assistance programs to reduce electricity costs for low-income residential ratepayers of such small LDC, provided that such

assistance is made available equitably to all residential ratepayers below a certain income level, which shall not be higher than 200 percent of the poverty line (as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

"(3) REQUIREMENTS.—As part of the regulations promulgated under subsection (f), the Administrator shall prescribe—

"(A) after consultation with the Federal Energy Regulatory Commission, requirements to ensure that programs and projects under paragraph (2)(A) and (B) are consistent with the standards established by, and effectively supplement electricity savings and generation of electricity from renewable energy resources achieved by, the Combined Efficiency and Renewable Electricity Standard established under section 610 of the Public Utility Regulatory Policies Act of 1978;

"(B) eligibility criteria and guidelines for consumer assistance programs for low-income residential ratepayers under paragraph (2)(C); and

"(C) such other requirements as the Administrator determines appropriate to ensure compliance with the requirements of this subsection.

"(4) REPORTING.—Reports submitted under subsection (b)(7) shall include, in accordance with such requirements as the Administrator may prescribe—

"(A) a description of any facilities deployed under paragraph (2)(A), the quantity of resulting electricity generation from renewable energy resources;

"(B) an assessment demonstrating the cost-effectiveness of, and electricity savings achieved by, programs supported under paragraph (2)(B); and

"(C) a description of assistance provided to low-income retail ratepayers under paragraph (2)(C).

"(f) REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Federal Energy Regulatory Commission, shall promulgate regulations to implement the requirements of this section.

"SEC. 784. NATURAL GAS CONSUMERS.

"(a) DEFINITIONS.—For purposes of this section:

"(1) COST-EFFECTIVE.—The term 'cost-effective', with respect to an energy efficiency program, means that the program meets the Total Resource Cost Test, which requires that the net present value of economic benefits over the life of the program, including avoided supply and delivery costs and deferred or avoided investments, is greater than the net present value of the economic costs over the life of the program, including program costs and incremental costs borne by the energy consumer.

"(2) NATURAL GAS LOCAL DISTRIBUTION COMPANY.—The term 'natural gas local distribution company' means a natural gas local distribution company that is a covered entity.

"(3) NON-COVERED ENTITY.—The term 'non-covered entity' means, when used in reference to a date or period prior to the enactment of this title, an entity that would not have been a covered entity if this title had been in effect during such date or period.

"(4) STATE REGULATORY AUTHORITY.—The term 'State regulatory authority' has the meaning given the term 'State commission' in section 2(8) of the Natural Gas Act (15 U.S.C. 717a(8)).

"(b) DISTRIBUTION.—Not later than June 30 of 2015 and each calendar year thereafter through 2028, the Administrator shall distribute to natural gas local distribution companies for the benefit of retail ratepayers the quantity of emission allowances allocated for the following vintage year pursuant to section 782(b). Such allowances shall be distributed among local natural gas distribution companies based on the following formula:

"(1) INITIAL FORMULA.—Except as provided in paragraph (2), for each vintage year, the Administrator shall distribute emission allowances among natural gas local distribution companies ratably based on each such company's annual average retail natural gas deliveries for 2006 through 2008 to customers that were non-covered entities, unless the owner or operator of the company selects 3 other consecutive years between 1999 and 2008, inclusive, and timely notifies the Administrator of its selection.

"(2) UPDATING.—Prior to distributing 2019 vintage year emission allowances and at 3-year intervals thereafter, the Administrator shall update the distribution formula under this subsection to reflect changes in each natural gas local distribution company's service territory since the most recent formula was established. For each successive 3-year pe-

riod, the Administrator shall distribute allowances ratably among natural gas local distribution companies based on the product of—

"(A) each natural gas local distribution company's average annual natural gas deliveries per customer to customers that were non-covered entities during calendar years 2006 through 2008, or during the 3 alternative consecutive years selected by such company under paragraph (1); and

"(B) the number of customers of such natural gas local distribution company that are not covered entities in the most recent year in which the formula is updated under this paragraph.

"(c) USE OF ALLOWANCES.—

"(1) RATEPAYER BENEFIT.—Emission allowances distributed to a natural gas local distribution company under this section shall be used exclusively for the benefit of retail ratepayers of such natural gas local distribution company other than covered entities and may not be used to support natural gas sales or deliveries to entities or persons other than such ratepayers.

"(2) RATEPAYER CLASSES.—In using emission allowances distributed under this section for the benefit of ratepayers, a natural gas local distribution company shall ensure that ratepayer benefits are distributed—

"(A) among ratepayer classes ratably based on natural gas deliveries to each class, excluding deliveries to covered entities; and

"(B) equitably among individual ratepayers other than covered entities within each ratepayer class.

"(3) LIMITATION.—In general, a natural gas local distribution company shall not use the value of emission allowances distributed under this section to provide to any ratepayer a rebate that is based solely on the quantity of natural gas delivered to such ratepayer. To the extent a natural gas local distribution company uses the value of emission allowances distributed under this section to provide rebates, it shall, to the maximum extent practicable, provide such rebates with regard to the fixed portion of ratepayers' bills or as a fixed creditor rebate on natural gas bills.

"(4) INDUSTRIAL RATEPAYERS.—Notwithstanding paragraph (3), if compliance with the re-

quirements of this title results (or would otherwise result) in an increase in natural gas costs for industrial retail ratepayers of any given natural gas local distribution company that are not covered entities (including entities that receive emission allowances pursuant to part F), such natural gas local distribution company—

"(A) shall pass through to industrial retail ratepayers that are not covered entities their ratable share (based on deliveries to each ratepayer class) of the value of the emission allowances distributed to such company under this subsection, to reduce natural gas cost impacts on such ratepayers; and

"(B) may do so based on the quantity of natural gas delivered to individual industrial retail ratepayers.

"(5) ENERGY EFFICIENCY PROGRAMS.—The value of no less than one third of the emission allowances distributed to natural gas local distribution companies pursuant to this section in any calendar year shall be used for cost-effective energy efficiency programs for natural gas consumers. Such programs must be authorized and overseen by the State regulatory authority, or by the entity with authority to

1 regulate or set retail natural gas rates in the case
2 of a natural gas local distribution company that is
3 not regulated by a State regulatory authority.

4 "(6) CERTAIN INTRACOMPANY DELIVERIES.—If
5 a natural gas local distribution company makes an
6 intracompany delivery of natural gas to a customer
7 that is not a covered entity, for which such company
8 is required to hold emission allowances under section
9 722, such customer shall, for purposes of this sec-
10 tion, be considered a retail ratepayer and a member
11 of a ratepayer class to be determined by the relevant
12 State regulatory authority, or other entity with au-
13 thority to regulate or set natural gas rates in the
14 case of a company not regulated by a State regu-
15 latory authority.

16 "(7) GUIDELINES.—As part of the regulations
17 promulgated under subsection (h), the Administrator
18 shall, after consultation with State regulatory au-
19 thorities, prescribe guidelines for the implementation
20 of the requirements of this subsection. Such guide-
21 lines shall include requirements to ensure that in-
22 dustrial retail ratepayers that are not covered enti-
23 ties (including entities that receive emission allow-
24 ances under part F) receive their ratable share of
25 the value of the allowances distributed to each nat-

ural gas local distribution company pursuant to this section.

"(d) REGULATORY PROCEEDINGS.—

"(1) REQUIREMENT.—No natural gas local distribution company shall be eligible to receive emission allowances under this section unless the State regulatory authority with authority over the retail rates of such company, or the entity with authority to regulate or set retail rates of a natural gas local distribution company not regulated by a State regulatory authority, has—

"(A) after public notice and an opportunity for comment, promulgated a regulation or completed a public rate proceeding (or the equivalent, in the case of a ratemaking entity other than a State regulatory authority) that provides for the full implementation of the requirements of subsection (c); and

"(B) made available to the Administrator and the public a report describing, in adequate detail, the manner in which the requirements of subsection (c) will be implemented.

"(2) UPDATING.—The Administrator shall require, as a condition of continued receipt of emission allowances under this section, that a new regulation

be promulgated or rate proceeding be completed, after public notice and an opportunity for comment, and a new report be made available to the Administrator and the public, pursuant to paragraph (1), not less frequently than every 5 years.

''(e) PLANS AND REPORTING.—

''(1) REGULATIONS.—As part of the regulations promulgated under subsection (h), the Administrator shall prescribe requirements governing plans and reports to be submitted in accordance with this subsection.

''(2) PLANS.—Not later than April 30 of 2015 and every 5 years thereafter through 2025, each natural gas local distribution company shall submit to the Administrator a plan, approved by the State regulatory authority or other entity charged with regulating or setting the retail rates of such company, describing such company's plans for the disposition of the value of emission allowances to be received pursuant to this section, in accordance with the requirements of this section.

''(3) REPORTS.—Not later than June 30 of 2017 and each calendar year thereafter through 2031, each natural gas local distribution company shall submit a report to the Administrator, approved

by the relevant State regulatory authority or other entity charged with regulating or setting the retail natural gas rates of such company, describing the disposition of the value of any emission allowances received by such company in the prior calendar year pursuant to this section, including—

"(A) a description of sales, transfer, exchange, or use by the company for compliance with obligations under this title, of any such emission allowances;

"(B) the monetary value received by the company, whether in money or in some other form, from the sale, transfer, or exchange of emission allowances received by the company under this section;

"(C) the manner in which the company's disposition of emission allowances received under this section complies with the requirements of this section, including each of the requirements of subsection (c);

"(D) the cost-effectiveness of, and energy savings achieved by, energy efficiency programs supported through such emission allowances; and

"(E) such other information as the Administrator may require pursuant to paragraph (1).

"(4) PUBLICATION.—The Administrator shall make available to the public all plans and reports submitted by natural gas local distribution companies under this subsection, including by publishing such plans and reports on the Internet.

"(f) AUDITS.—Each year, the Administrator shall audit a representative sample of natural gas local distribution companies to ensure that emission allowances distributed under this section have been used exclusively for the benefit of retail ratepayers and that such companies are complying with the requirements of this section. In selecting companies for audit, the Administrator shall take into account any credible evidence of noncompliance with such requirements. The Administrator shall make available to the public a report describing the results of each such audit, including by publishing such report on the Internet.

"(g) ENFORCEMENT.—A violation of any requirement of this section shall be a violation of this Act. Each emission allowance the value of which is used in violation of the requirements of this section shall be a separate violation.

"(h) REGULATIONS.—Not later than January 1, 2014, the Administrator, in consultation with the Federal

Energy Regulatory Commission, shall promulgate regulations to implement the requirements of this section.

"SEC. 785. HOME HEATING OIL, PROPANE, AND KEROSENE CONSUMERS.

"(a) DEFINITIONS.—For purposes of this section:

"(1) CARBON CONTENT.—The term 'carbon content' means the amount of carbon dioxide that would be emitted as a result of the combustion of a fuel.

"(2) COST-EFFECTIVE.—The term 'cost-effective' has the meaning given that term in section 784(a)(1).

"(3) OILHEAT FUEL.—The term 'oilheat fuel' means fuel that—

"(A) is—

"(i) No. 1 distillate;

"(ii) No. 2 dyed distillate;

"(iii) a liquid blended with No. 1 distillate or No. 2 dyed distillate; or

"(iv) a biobased liquid; and

"(B) is used as a fuel for nonindustrial commercial or residential space or hot water heating.

"(b) DISTRIBUTION AMONG STATES.—Not later than September 30 of each of calendar years 2011 through

2028, the Administrator shall distribute among the States, in accordance with this section, the quantity of emission allowances allocated for the following vintage year pursuant to section 782(c). The Administrator shall distribute emission allowances among the States under this section each year ratably based on the ratio of—

"(1) the carbon content of oilheat fuel, propane, and kerosene sold to consumers within each State in the preceding year for residential or commercial uses; to

"(2) the carbon content of oilheat fuel, propane, and kerosene sold to consumers within the United States in the preceding year for residential or commercial uses.

"(c) USE OF ALLOWANCES.—

"(1) IN GENERAL.—States shall use emission allowances distributed under this section exclusively for the benefit of consumers of oilheat fuel, propane, or kerosene for residential or commercial purposes. Such proceeds shall be used exclusively for—

"(A) cost-effective energy efficiency programs for consumers that use oilheat fuel, propane, or kerosene for residential or commercial purposes; or

"(B) rebates or other direct financial assistance programs for consumers of oilheat fuel, propane, or kerosene used for residential or commercial purposes.

"(2) ADMINISTRATION AND DELIVERY MECHANISMS.—In administering programs supported by this section, States shall

"(A) use no less than 50 percent of the value of emission allowances received under this section for cost-effective energy efficiency programs to reduce consumers' overall fuel costs;

"(B) to the extent practicable, deliver consumer support under this section through existing energy efficiency and consumer energy assistance programs or delivery mechanisms, including, where appropriate, programs or mechanisms administered by parties other than the State; and

"(C) seek to coordinate the administration and delivery of energy efficiency and consumer energy assistance programs supported under this section, with one another and with existing programs for various fuel types, so as to deliver comprehensive, fuel-blind, coordinated programs to consumers.

"(d) REPORTING.—Each State receiving emission allowances under this section shall submit to the Administrator, within 12 months of each receipt of such allowances, a report, in accordance with such requirements as the Administrator may prescribe, that—

"(1) describes the State's use of emission allowances distributed under this section, including a description of the energy efficiency and consumer assistance programs supported with such allowances;

"(2) demonstrates the cost-effectiveness of, and the energy savings and greenhouse gas emissions reductions achieved by, energy efficiency programs supported under this section; and

"(3) includes a report prepared by an independent third party, in accordance with such regulations as the Administrator may promulgate, evaluating the performance of the energy efficiency and consumer assistance programs supported under this section.

"(e) ENFORCEMENT.—If the Administrator determines that a State is not in compliance with this section, the Administrator may withhold a portion of the emission allowances, the quantity of which is equal to up to twice the quantity of the allowances that the State failed to use in accordance with the requirements of this section, that

such State would otherwise be eligible to receive under this section in later years. Allowances withheld pursuant to this subsection shall be distributed among the remaining States ratably in accordance with the formula in subsection (b).

"SEC. 787. ALLOCATIONS TO REFINERIES.

"(a) PURPOSE.—The purpose of this section is to provide emission allowance rebates to petroleum refineries in the United States in a manner that promotes energy efficiency and a reduction in greenhouse gas emissions at such facilities.

"(b) DEFINITIONS.—In this section:

"(1) EMISSIONS.—The term 'emissions' includes direct emissions from fuel combustion, process emissions, and indirect emissions from the generation of electricity, steam, and hydrogen used to produce the output of a petroleum refinery or the petroleum refinery sector.

"(2) PETROLEUM REFINERY.—The term 'petroleum refinery' means a facility classified under code 324110 of the North American Industrial Classification System of 2002.

"(3) SMALL BUSINESS REFINER.—The term 'small business refiner' means a refiner that meets the applicable Federal refinery capacity and em-

ployee limitations criteria described in section 45H(c)(1) of the Internal Revenue Code of 1986 (as in effect on the date of enactment of this section and without regard to section 45H(d)). Eligibility of a small business refiner under this paragraph shall not be recalculated or disallowed on account of (i) its merger with another small business refiner or refiners after December 31, 2002 or (ii) its acquisition of another small business refiner (or refinery of such refiner) after December 31, 2002.

''(c) IN GENERAL.—For each vintage year between 2014 and 2026, the Administrator shall distribute allowances pursuant to this section to owners and operators of petroleum refineries, including small business refiners, in the United States.

''(d) DISTRIBUTION SCHEDULE.—The Administrator shall distribute emission allowances pursuant to the regulations issued under subsection (e) for each vintage year no later than October 31 of the preceding calendar year.

''(e) REGULATIONS.—Not later than 3 years after the date of enactment of this title, the Administrator, in consultation with the Administrator of the Energy Information Administration, shall promulgate regulations that establish a formula for distributing emission allowances consistent with the purpose of this section. In establishing

such formula, the Administrator shall consider the relative complexity of refinery processes and appropriate mechanisms to take energy efficiency and greenhouse gas reductions into account. If a petroleum refinery's electricity provider received a free allocation of emission allowances pursuant to section 782(a), the Administrator shall take this free allocation into account when establishing such formula to avoid rebates to a petroleum refinery for costs that the Administrator determines were not incurred by the petroleum refinery because the allowances were freely allocated to the petroleum refinery's electricity provider and used for the benefit of the petroleum refinery. This formula shall apply separately to the distribution of allowances allocated pursuant to section 782(j)(1) and to those allocated under section 782(j)(2).

"SEC. 788. [SECTION RESERVED].

"SEC. 789. CLIMATE CHANGE CONSUMER REFUNDS.

"(a) REFUND.—In each year after deposits are made to the Climate Change Consumer Refund Account, the Secretary of the Treasury shall provide tax refunds on a per capita basis to each household in the United States that shall collectively equal the amount deposited into the Climate Change Consumer Refund Account.

"(b) LIMITATIONS.—The Secretary of the Treasury shall establish procedures to ensure that individuals who are not—

"(1) citizens or nationals of the United States; or

"(2) immigrants lawfully residing in the United States,

are excluded for the purpose of calculating and distributing refunds under this section.

"SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.

"(a) IN GENERAL.—Not later than one year after the date of enactment of this title, the Administrator shall issue regulations allowing any person in the United States to exchange greenhouse gas emission allowances issued before December 31, 2011, by the State of California or for the Regional Greenhouse Gas Initiative, or the Western Climate Initiative (in this section referred to as 'State allowances') for emission allowances established by the Administrator under section 721(a).

"(b) REGULATIONS.—Regulations issued under subsection (a) shall—

"(1) provide that a person exchanging State allowances under this section receive emission allowances established under section 721(a) in the

amount that is sufficient to compensate for the cost of obtaining and holding such State allowances;

''(2) establish a deadline by which persons must exchange the State allowances; and

''(3) provide that the Federal emission allowances disbursed pursuant to this section shall be deducted from the allowances to be auctioned pursuant to section 782(d).

''(c) COST OF OBTAINING STATE ALLOWANCE.—For purposes of this section, the cost of obtaining a State allowance shall be the average auction price, for emission allowances issued in the year in which the State allowance was issued, under the program under which the State allowance was issued.

''SEC. 791. AUCTION PROCEDURES.

''(a) IN GENERAL.—To the extent that auctions of emission allowances by the Administrator are authorized by this part, such auctions shall be carried out pursuant to this section and the regulations established hereunder.

''(b) INITIAL REGULATIONS.—Not later than 12 months after the date of enactment of this title, the Administrator, in consultation with other agencies, as appropriate, shall promulgate regulations governing the auction of allowances under this section. Such regulations shall include the following requirements:

"(1) FREQUENCY; FIRST AUCTION.—Auctions shall be held four times per year at regular intervals, with the first auction to be held no later than March 31, 2011.

"(2) AUCTION SCHEDULE; CURRENT AND FUTURE VINTAGES.—The Administrator shall, at each quarterly auction under this section, offer for sale both a portion of the allowances with the same vintage year as the year in which the auction is being conducted and a portion of the allowances with vintage years from future years. The preceding sentence shall not apply to auctions held before 2012, during which period, by necessity, the Administrator shall auction only allowances with a vintage year that is later than the year in which the auction is held. Beginning with the first auction and at each quarterly auction held thereafter, the Administrator may offer for sale allowances with vintage years of up to four years after the year in which the auction is being conducted, except as provided in section 782(p).

"(3) AUCTION FORMAT.—Auctions shall follow a single-round, sealed-bid, uniform price format.

"(4) PARTICIPATION; FINANCIAL ASSURANCE.—Auctions shall be open to any person, except that

the Administrator may establish financial assurance requirements to ensure that auction participants can and will perform on their bids.

"(5) DISCLOSURE OF BENEFICIAL OWNERSHIP.—Each bidder in the auction shall be required to disclose the person or entity sponsoring or benefitting from the bidder's participation in the auction if such person or entity is, in whole or in part, other than the bidder.

"(6) PURCHASE LIMITS.—No person may, directly or in concert with another participant, purchase more than 5 percent of the allowances offered for sale at any quarterly auction.

"(7) PUBLICATION OF INFORMATION.—After the auction, the Administrator shall, in a timely fashion, publish the identities of winning bidders, the quantity of allowances obtained by each winning bidder, and the auction clearing price.

"(8) OTHER REQUIREMENTS.—The Administrator may include in the regulations such other requirements or provisions as the Administrator, in consultation with other agencies, as appropriate, considers appropriate to promote effective, efficient, transparent, and fair administration of auctions under this section.

1 "(c) REVISION OF REGULATIONS.—The Adminis-
2 trator may, in consultation with other agencies, as appro-
3 priate, at any time, revise the initial regulations promul-
4 gated under subsection (b) by promulgating new regula-
5 tions. Such revised regulations need not meet the require-
6 ments identified in subsection (b) if the Administrator de-
7 termines that an alternative auction design would be more
8 effective, taking into account factors including costs of ad-
9 ministration, transparency, fairness, and risks of collusion
10 or manipulation. In determining whether and how to re-
11 vise the initial regulations under this subsection, the Ad-
12 ministrator shall not consider maximization of revenues to
13 the Federal Government.

14 "(d) RESERVE AUCTION PRICE.—The minimum re-
15 serve auction price shall be $10 (in constant 2009 dollars)
16 for auctions occurring in 2012. The minimum reserve
17 price for auctions occurring in years after 2012 shall be
18 the minimum reserve auction price for the previous year
19 increased by 5 percent plus the rate of inflation (as meas-
20 ured by the Consumer Price Index for all urban con-
21 sumers).

22 "(e) DELEGATION OR CONTRACT.—Pursuant to reg-
23 ulations under this section, the Administrator may by del-
24 egation or contract provide for the conduct of auctions
25 under the Administrator's supervision by other depart-

ments or agencies of the Federal Government or by non-governmental agencies, groups, or organizations.

"(f) SMALL BUSINESS REFINER RESERVE.—The Administrator shall, in accordance with this subsection, issue regulations setting aside a specified number of allowances that small business refiners may purchase at the average auction price and may use to demonstrate compliance pursuant to section 722. These regulations shall provide the following:

"(1) AMOUNT.—The Administrator shall place in the small business refiner reserve account allowances that are to be sold at auction pursuant to the allocations in section 782 in an amount equal to—

"(A) 6.2 percent of the emission allowances established under section 721(a) for each vintage year from 2012 through 2013;

"(B) 5.4 percent of the emission allowances established under section 721(a) for each vintage year from 2014 through 2015; and

"(C) 4.9 percent of the emission allowances established under section 721(a) for each vintage year from 2016 through 2024.

"(2) ALLOWED PURCHASES.—From January 1 of the calendar year that matches the vintage year for which allowances have been placed in the reserve,

through January 14 of the following year, small business refiners (as defined in section 787(b)) may purchase allowances from this reserve at the price determined pursuant to paragraph (3).

"(3) PRICE.—The price for allowances purchased from this reserve shall be the average auction price for allowances of the same vintage year purchased at auctions conducted pursuant to this section during the 12 months preceding the purchase of the allowances.

"(4) USE OF ALLOWANCES.—Allowances purchased from this reserve shall only be used by the purchaser to demonstrate compliance pursuant to section 722 for attributable greenhouse gas emissions in the calendar year that matches the vintage year of the purchased allowance. Allowances purchased from this reserve may not be banked, traded or borrowed.

"(5) LIMITATIONS ON PURCHASE AMOUNT.—The Administrator, by regulation adopted after public notice and an opportunity for comment, shall establish procedures to distribute the ability to purchase allowances from the reserve fairly among all small business refiners interested in purchasing allowances from this reserve so as to address the po-

tential that requests to purchase allowances exceed the number of allowances available in the reserve. This regulation may place limits on the number of allowances a small business refiner may purchase from the reserve.

"(6) UNSOLD ALLOWANCES.—Vintage year allowances not sold from the reserve on or before January 15 of the calendar year following the vintage year shall be sold at an auction conducted pursuant to this section no later than March 31 of the calendar year following the vintage year. If significantly more allowances are being placed in the reserve than are being purchased from the reserve several years in a row, the Administrator may adjust either the percent of allowances placed in the reserve or the date by which allowances may be purchased from the reserve.

"SEC. 792. AUCTIONING ALLOWANCES FOR OTHER ENTITIES.

"(a) CONSIGNMENT.—Any entity holding emission allowances or compensatory allowances may request that the Administrator auction, pursuant to section 791, the allowances on consignment.

"(b) PRICING.—When the Administrator acts under this section as the agent of an entity in possession of emis-

sion allowances or compensatory allowances, the Administrator is not obligated to obtain the highest price possible for the allowances, and instead shall auction consignment allowances in the same manner and pursuant to the same rules as auctions of other allowances under section 791. The Administrator may permit the entity offering the allowance for sale to condition the sale of its allowances pursuant to this section on a minimum reserve price that is different than the reserve auction price set pursuant to section 791(d).

"(c) PROCEEDS.—For emission allowances and compensatory allowances auctioned pursuant to this section, notwithstanding section 3302 of title 31, United States Code, or any other provision of law, within 90 days of receipt, the United States shall transfer the proceeds from the auction to the entity which held the allowances auctioned. No funds transferred from a purchaser to a seller of emission allowances or compensatory allowances under this subsection shall be held by any officer or employee of the United States or treated for any purpose as public monies.

"(d) UNSOLD ALLOWANCES.—Allowances offered for sale under this section that are not sold shall be returned to the entity in possession of the allowance, notwithstanding section 726(b)(2)(A).

"(e) REGULATIONS.—The Administrator shall issue regulations within 24 months after the date of enactment of this title to implement this section.

"SEC. 793. ESTABLISHMENT OF FUNDS.

"There is hereby established in the Treasury of the United States the following separate accounts:

"(1) The Strategic Reserve Fund.

"(2) The Climate Change Consumer Refund Account.

"(3) The Climate Change Worker Adjustment Assistance Fund.

"SEC. 794. OVERSIGHT OF ALLOCATIONS.

"(a) IN GENERAL.—Not later than January 1, 2014, and every 2 years thereafter, the Comptroller General of the United States shall carry out and report to Congress on the results of a review of programs administered by the Federal Government that distribute emission allowances or funds from any Federal auction of allowances.

"(b) CONTENTS.—Each such report shall include a comprehensive evaluation of the administration and effectiveness of each program, including—

"(1) the efficiency, transparency, and soundness of the administration of each program;

"(2) the performance of activities receiving assistance under each program;

"(3) the cost-effectiveness of each program in achieving the stated purposes of the program; and

"(4) recommendations, if any, for legislative, regulatory, or administrative changes to each program to improve its effectiveness.

"(c) FOCUS.—In evaluating program performance, each review under this section review shall address the effectiveness of such programs in—

"(1) creating and preserving jobs;

"(2) ensuring a manageable transition for working families and workers;

"(3) reducing the emissions, or enhancing sequestration, of greenhouse gases;

"(4) developing clean technologies; and

"(5) building resilience to the impacts of climate change.".

Subtitle C—Additional Greenhouse Gas Standards

SEC. 331. GREENHOUSE GAS STANDARDS.

The Clean Air Act (42 U.S.C. 7401 and following), as amended by subtitles A and B of this title, is further amended by adding the following new title after title VII:

"TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

"SEC. 801. DEFINITIONS.

''For purposes of this title, terms that are defined in title VII, except for the term 'stationary source', shall have the meaning given those terms in title VII.

"PART A—STATIONARY SOURCE STANDARDS

"SEC. 811. STANDARDS OF PERFORMANCE.

''(a) UNCAPPED STATIONARY SOURCES.—

''(1) INVENTORY OF SOURCE CATEGORIES.—(A) Within 12 months after the date of enactment of this title, the Administrator shall publish under section 111(b)(1)(A) an inventory of categories of stationary sources that consist of those categories that contain sources that individually had uncapped greenhouse gas emissions greater than 10,000 tons of carbon dioxide equivalent and that, in the aggregate, were responsible for emitting at least 20 percent annually of the uncapped greenhouse gas emissions.

''(B) The Administrator shall include in the inventory under this paragraph each source category that is responsible for at least 10 percent of the uncapped methane emissions in 2005. Notwithstanding any other provision, the inventory required by this

1 section shall not include sources of enteric fermenta-
2 tion. The list under this paragraph shall include in-
3 dustrial sources, the emissions from which, when
4 added to the capped emissions from industrial
5 sources, constitute at least 95 percent of the green-
6 house gas emissions of the industrial sector.

7 ''(C) For purposes of this subsection, emissions
8 shall be calculated using tons of carbon dioxide
9 equivalents. In promulgating the inventory required
10 by this paragraph and the schedule required under
11 by paragraph (2)(C), the Administrator shall use the
12 most current emissions data available at the time of
13 promulgation, except as provided in subparagraph
14 (B).

15 ''(D) Notwithstanding any other provisions, the
16 Administrator may list under 111(b) any source cat-
17 egory identified in the inventory required by this
18 subsection without making a finding that the source
19 category causes or contributes significantly to, air
20 pollution with may be reasonably anticipated to en-
21 danger public health or welfare.

22 ''(2) STANDARDS AND SCHEDULE.—(A) For
23 each category identified as provided in paragraph
24 (1), the Administrator shall promulgate standards of
25 performance under section 111 for the uncapped

emissions of greenhouse gases from stationary sources in that category and shall promulgate corresponding regulations under section 111(d).

"(B) The Administrator shall promulgate standards as required by this subsection for stationary sources in categories identified as provided in paragraph (1) as expeditiously as practicable, assuring that—

"(i) standards for identified source categories that, combined, emitted 80 percent or more of the greenhouse gas emissions of the identified source categories shall be promulgated not later than 3 years after the date of enactment of this title and shall include standards for natural gas extraction; and

"(ii) for all other identified source categories—

"(I) standards for not less than an additional 25 percent of the identified categories shall be promulgated not later than 5 years after the date of enactment of this title;

"(II) standards for not less than an additional 25 percent of the identified categories shall be promulgated not later than

7 years after the date of enactment of this title; and

"(III) standards for all the identified categories shall be promulgated not later than 10 years after the date of enactment of this title.

"(C) Not later than 24 months after the date of enactment of this title and after notice and opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of standards for each category of sources identified pursuant to paragraph (1). The date for each category shall be consistent with the requirements of subparagraph (B). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 304(a)(2).

"(D) Notwithstanding section 307, no action of the Administrator listing a source category under paragraph (1) shall be a final agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Adminis-

1 trator issues performance standards for such cat-
2 egory.

3 "(b) CAPPED SOURCES.—No standard of perform-
4 ance shall be established under section 111 for capped
5 greenhouse gas emissions from a capped source unless the
6 Administrator determines that such standards are appro-
7 priate because of effects that do not include climate
8 change effects. In promulgating a standard of perform-
9 ance under section 111 for the emission from capped
10 sources of any air pollutant that is not a greenhouse gas,
11 the Administrator shall treat the emission of any green-
12 house gas by those entities as a nonair quality public
13 health and environmental impact within the meaning of
14 section 111(a)(1).

15 "(c) PERFORMANCE STANDARDS.—For purposes of
16 setting a performance standard for source categories iden-
17 tified pursuant to subsection (a)—

18 "(1) The Administrator shall take into account
19 the goal of reducing total United States greenhouse
20 gas emissions as set forth in section 702.

21 "(2) The Administrator may promulgate a de-
22 sign, equipment, work practice, or operational stand-
23 ard, or any combination thereof, under section 111
24 in lieu of a standard of performance under that sec-
25 tion without regard to any determination of feasi-

bility that would otherwise be required under section 111(h).

"(3) Notwithstanding any other provision, in setting the level of each standard required by this section, the Administrator shall take into account projections of allowance prices, such that the marginal cost of compliance (expressed as dollars per ton of carbon dioxide equivalent reduced) imposed by the standard would not, in the judgement of the Administrator, be expected to exceed the Administrator's projected allowance prices over the time period spanning from the date of initial compliance to the date that the next revisions of the standard would come into effect pursuant to the schedule under section 111(b)(1)(B).

"(d) DEFINITIONS.—In this section, the terms 'uncapped greenhouse gas emissions' and 'uncapped methane emissions' mean those greenhouse gas or methane emissions, respectively, to which section 722 would not have applied if the requirements of this title had been in effect for the same year as the emissions data upon which the list is based.

"(e) STUDY OF THE EFFECTS OF PERFORMANCE STANDARDS.—

"(1) STUDY.—The Administrator shall conduct a study of the impacts of performance standards required under this section, which shall evaluate the effect of such standards on the—

"(A) costs of achieving compliance with the economy-wide reduction goals specified in section 702 and the reduction targets specified in section 703;

"(B) available supply of offset credits; and

"(C) ability to achieve the economy-wide reduction goals specified in section 702 and any other benefits of such standards.

"(2) REPORT.—The Administrator shall submit to the House Energy and Commerce Committee a report that describes the results of the study not later than 18 months after the publication of the standards required under subsection (a)(2)(B)(i).

"PART C—EXEMPTIONS FROM OTHER PROGRAMS

"SEC. 831. CRITERIA POLLUTANTS.

"As of the date of the enactment of the Safe Climate Act, no greenhouse gas may be added to the list under section 108(a) on the basis of its effect on global climate change.

"SEC. 832. INTERNATIONAL AIR POLLUTION.

"Section 115 shall not apply to an air pollutant with respect to that pollutant's contribution to global warming.

"SEC. 833. HAZARDOUS AIR POLLUTANTS.

"No greenhouse gas may be added to the list of hazardous air pollutants under section 112 unless such greenhouse gas meets the listing criteria of section 112(b) independent of its effects on global climate change.

"SEC. 834. NEW SOURCE REVIEW.

"The provisions of part C of title I shall not apply to a major emitting facility that is initially permitted or modified after January 1, 2009, on the basis of its emissions of any greenhouse gas.

"SEC. 835. TITLE V PERMITS.

"Notwithstanding any provision of title III or V, no stationary source shall be required to apply for, or operate pursuant to, a permit under title V, solely because the source emits any greenhouse gases that are regulated solely because of their effect on global climate change.".

SEC. 332. HFC REGULATION.

(a) IN GENERAL.—Title VI of the Clean Air Act (42 U.S.C. 7671 et seq.) (relating to stratospheric ozone protection) is amended by adding at the end the following:

"SEC. 619. HYDROFLUOROCARBONS (HFCS).

"(a) TREATMENT AS CLASS II, GROUP II SUBSTANCES.—Except as otherwise provided in this section,

hydrofluorocarbons shall be treated as class II substances for purposes of applying the provisions of this title. The Administrator shall establish two groups of class II substances. Class II, group I substances shall include all hydrochlorofluorocarbons (HCFCs) listed pursuant to section 602(b). Class II, group II substances shall include each of the following:

"(1) Hydrofluorocarbon-23 (HFC-23).

"(2) Hydrofluorocarbon-32 (HFC-32).

"(3) Hydrofluorocarbon-41 (HFC-41).

"(4) Hydrofluorocarbon-125 (HFC-125).

"(5) Hydrofluorocarbon-134 (HFC-134).

"(6) Hydrofluorocarbon-134a (HFC-134a).

"(7) Hydrofluorocarbon-143 (HFC-143).

"(8) Hydrofluorocarbon-143a (HFC-143a).

"(9) Hydrofluorocarbon-152 (HFC-152).

"(10) Hydrofluorocarbon-152a (HFC-152a).

"(11) Hydrofluorocarbon-227ea (HFC-227ea).

"(12) Hydrofluorocarbon-236cb (HFC-236cb).

"(13) Hydrofluorocarbon-236ea (HFC-236ea).

"(14) Hydrofluorocarbon-236fa (HFC-236fa).

"(15) Hydrofluorocarbon-245ca (HFC-245ca).

"(16) Hydrofluorocarbon-245fa (HFC-245fa).

"(17) Hydrofluorocarbon-365mfc (HFC-365mfc).

"(18) Hydrofluorocarbon-43-10mee (HFC-43-10mee).

"(19) Hydrofluoroolefin-1234yf (HFO-1234yf).

"(20) Hydrofluoroolefin-1234ze (HFO-1234ze).

Not later than 6 months after the date of enactment of this title, the Administrator shall publish an initial list of class II, group II substances, which shall include the substances listed in this subsection. The Administrator may add to the list of class II, group II substances any other substance used as a substitute for a class I or II substance if the Administrator determines that 1 metric ton of the substance makes the same or greater contribution to global warming over 100 years as 1 metric ton of carbon dioxide. Within 24 months after the date of enactment of this section, the Administrator shall amend the regulations under this title (including the regulations referred to in sections 603, 608, 609, 610, 611, 612, and 613) to apply to class II, group II substances.

"(b) CONSUMPTION AND PRODUCTION OF CLASS II, GROUP II SUBSTANCES.—

"(1) IN GENERAL.—

"(A) CONSUMPTION PHASE DOWN.—In the case of class II, group II substances, in lieu of applying section 605 and the regulations thereunder, the Administrator shall promulgate reg-

ulations phasing down the consumption of class II, group II substances in the United States, and the importation of products containing any class II, group II substance, in accordance with this subsection within 18 months after the date of enactment of this section. Effective January 1, 2012, it shall be unlawful for any person to produce any class II, group II substance, import any class II, group II substance, or import any product containing any class II, group II substance without holding one consumption allowance or one destruction offset credit for each carbon dioxide equivalent ton of the class II, group II substance. Any person who exports a class II, group II substance for which a consumption allowance was retired may receive a refund of that allowance from the Administrator following the export.

"(B) PRODUCTION.—If the United States becomes a party or otherwise adheres to a multilateral agreement, including any amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, that restricts the production of class II, group II substances, the Administrator shall promulgate regulations estab-

lishing a baseline for the production of class II, group II substances in the United States and phasing down the production of class II, group II substances in the United States, in accordance with such multilateral agreement and subject to the same exceptions and other provisions as are applicable to the phase down of consumption of class II, group II substances under this section (except that the Administrator shall not require a person who obtains production allowances from the Administrator to make payment for such allowances if the person is making payment for a corresponding quantity of consumption allowances of the same vintage year). Upon the effective date of such regulations, it shall be unlawful for any person to produce any class II, group II substance without holding one consumption allowance and one production allowance, or one destruction offset credit, for each carbon dioxide equivalent ton of the class II, group II substance.

"(C) INTEGRITY OF CAP.—To maintain the integrity of the class II, group II cap, the Administrator may, through rulemaking, limit the percentage of each person's compliance obli-

gation that may be met through the use of destruction offset credits or banked allowances.

"(D) COUNTING OF VIOLATIONS.—Each consumption allowance, production allowance, or destruction offset credit not held as required by this section shall be a separate violation of this section.

"(2) SCHEDULE.—Pursuant to the regulations promulgated pursuant to paragraph (1)(A), the number of class II, group II consumption allowances established by the Administrator for each calendar year beginning in 2012 shall be the following percentage of the baseline, as established by the Administrator pursuant to paragraph (3):

"Calendar Year	Percent of Baseline
2012	90
2013	87.5
2014	85
2015	82.5
2016	80
2017	77.5
2018	75
2019	71
2020	67
2021	63
2022	59

"Calendar Year	Percent of Baseline
2023	54
2024	50
2025	46
2026	42
2027	38
2028	34
2029	30
2030	25
2031	21
2032	17
after 2032	15

"(3) BASELINE.—(A) Within 12 months after the date of enactment of this section, the Administrator shall promulgate regulations to establish the baseline for purposes of paragraph (2). The baseline shall be the sum, expressed in metric tons of carbon dioxide equivalents, of—

"(i) the annual average consumption of all class II substances in calendar years 2004, 2005, and 2006; plus

"(ii) the annual average quantity of all class II substances contained in imported products in calendar years 2004, 2005, and 2006.

"(B) Notwithstanding subparagraph (A), if the Administrator determines that the baseline is higher

than 370 million metric tons of carbon dioxide equivalents, then the Administrator shall establish the baseline at 370 million metric tons of carbon dioxide equivalents.

"(C) Notwithstanding subparagraph (A), if the Administrator determines that the baseline is lower than 280 million metric tons of carbon dioxide equivalents, then the Administrator shall establish the baseline at 280 million metric tons of carbon dioxide equivalents.

"(4) DISTRIBUTION OF ALLOWANCES.—

"(A) IN GENERAL.—Pursuant to the regulations promulgated under paragraph (1)(A), for each calendar year beginning in 2012, the Administrator shall sell consumption allowances in accordance with this paragraph.

"(B) ESTABLISHMENT OF POOLS.—The Administrator shall establish two allowance pools. Eighty percent of the consumption allowances available for a calendar year shall be placed in the producer-importer pool, and 20 percent of the consumption allowances available for a calendar year shall be placed in the secondary pool.

"(C) PRODUCER-IMPORTER POOL.—

"(i) AUCTION.—(I) For each calendar year, the Administrator shall offer for sale at auction the following percentage of the consumption allowances in the producer-importer pool:

"Calendar Year	Percent Available for Auction
2012	10
2013	20
2014	30
2015	40
2016	50
2017	60
2018	70
2019	80
2020 and thereafter	90

"(II) Any person who produced or imported any class II substance during calendar year 2004, 2005, or 2006 may participate in the auction. No other persons may participate in the auction unless permitted to do so pursuant to subclause (III).

"(III) Not later than three years after the date of the initial auction and from time to time thereafter, the Administrator shall determine through rulemaking wheth-

er any persons who did not produce or import a class II substance during calendar year 2004, 2005, or 2006 will be permitted to participate in future auctions. The Administrator shall base this determination on the duration, consistency, and scale of such person's purchases of consumption allowances in the secondary pool under subparagraph (D)(ii)(III), as well as economic or technical hardship and other factors deemed relevant by the Administrator.

"(IV) The Administrator shall set a minimum bid per consumption allowance of the following:

"(aa) For vintage year 2012, $1.00.

"(bb) For vintage year 2013, $1.20.

"(cc) For vintage year 2014, $1.40.

"(dd) For vintage year 2015, $1.60.

"(ee) For vintage year 2016, $1.80.

"(ff) For vintage year 2017, $2.00.

"(gg) For vintage year 2018 and thereafter, $2.00 adjusted for inflation after vintage year 2017 based upon the producer price index as published by the Department of Commerce.

"(ii) NON-AUCTION SALE.—(I) For each calendar year, as soon as practicable after auction, the Administrator shall offer for sale the remaining consumption allowances in the producer-importer pool at the following prices:

"(aa) A fee of $1.00 per vintage year 2012 allowance.

"(bb) A fee of $1.20 per vintage year 2013 allowance.

"(cc) A fee of $1.40 per vintage year 2014 allowance.

"(dd) For each vintage year 2015 allowance, a fee equal to the average of $1.10 and the auction clearing price for vintage year 2014 allowances.

"(ee) For each vintage year 2016 allowance, a fee equal to the average of $1.30 and the auction clearing price for vintage year 2015 allowances.

"(ff) For each vintage year 2017 allowance, a fee equal to the average of $1.40 and the auction clearing price for vintage year 2016 allowances.

"(gg) For each allowance of vintage year 2018 and subsequent vintage years, a fee equal to the auction clearing price for that vintage year.

"(II) The Administrator shall offer to sell the remaining consumption allowances in the producer-importer pool to producers of class II, group II substances and importers of class II, group II substances in proportion to their relative allocation share.

"(III) Such allocation share for such sale shall be determined by the Administrator using such producer's or importer's annual average data on class II substances

from calendar years 2004, 2005, and 2006, on a carbon dioxide equivalent basis, and—

"(aa) shall be based on a producer's production, plus importation, plus acquisitions and purchases from persons who produced class II substances in the United States during calendar years 2004, 2005, or 2006, less exportation, less transfers and sales to persons who produced class II substances in the United States during calendar years 2004, 2005, or 2006; and

"(bb) for an importer of class II substances that did not produce in the United States any class II substance during calendar years 2004, 2005, and 2006, shall be based on the importer's importation less exportation.

For purposes of item (aa), the Administrator shall account for 100 percent of class II, group II substances and 60 percent of class II, group I substances. For purposes of item (bb), the Administrator

shall account for 100 percent of class II, group II substances and 100 percent of class II, group I substances.

"(IV) Any consumption allowances made available for nonauction sale to a specific producer or importer of class II, group II substances but not purchased by the specific producer or importer shall be made available for sale to any producer or importer of class II substances during calendar years 2004, 2005, or 2006. If demand for such consumption allowances exceeds supply of such consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances that may include pro rata shares, historic production and importation, economic or technical hardship, or other factors deemed relevant by the Administrator. If the supply of such consumption allowances exceeds demand, the Administrator may offer such consumption allowances for sale in the secondary pool as set forth in subparagraph (D).

"(D) SECONDARY POOL.—(i) For each calendar year, as soon as practicable after the auction required in subparagraph (C), the Administrator shall offer for sale the consumption allowances in the secondary pool at the prices listed in subparagraph (C)(ii).

"(ii) The Administrator shall accept applications for purchase of secondary pool consumption allowances from—

"(I) importers of products containing class II, group II substances;

"(II) persons who purchased any class II, group II substance directly from a producer or importer of class II, group II substances for use in a product containing a class II, group II substance, a manufacturing process, or a reclamation process;

"(III) persons who did not produce or import a class II substance during calendar year 2004, 2005, or 2006, but who the Administrator determines have subsequently taken significant steps to produce or import a substantial quantity of any class II, group II substance; and

"(IV) persons who produced or imported any class II substance during calendar year 2004, 2005, or 2006.

"(iii) If the supply of consumption allowances in the secondary pool equals or exceeds the demand for consumption allowances in the secondary pool as presented in the applications for purchase, the Administrator shall sell the consumption allowances in the secondary pool to the applicants in the amounts requested in the applications for purchase. Any consumption allowances in the secondary pool not purchased in a calendar year may be rolled over and added to the quantity available in the secondary pool in the following year.

"(iv) If the demand for consumption allowances in the secondary pool as presented in the applications for purchase exceeds the supply of consumption allowances in the secondary pool, the Administrator shall sell the consumption allowances as follows:

"(I) The Administrator shall first sell the consumption allowances in the secondary pool to any importers of products containing class II, group II substances in

the amounts requested in their applications for purchase. If the demand for such consumption allowances exceeds supply of such consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances among importers of products containing class II, group II substances that may include pro rata shares, historic importation, economic or technical hardship, or other factors deemed relevant by the Administrator.

''(II) The Administrator shall next sell any remaining consumption allowances to persons identified in subclauses (II) and (III) of clause (ii) in the amounts requested in their applications for purchase. If the demand for such consumption allowances exceeds remaining supply of such consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances among subclauses (II) and (III) applicants that may include pro rata shares, historic use, economic or technical hardship, or

other factors deemed relevant by the Administrator.

"(III) The Administrator shall then sell any remaining consumption allowances to persons who produced or imported any class II substance during calendar year 2004, 2005, or 2006 in the amounts requested in their applications for purchase. If demand for such consumption allowances exceeds remaining supply of such consumption allowances, the Administrator shall develop and utilize criteria for the sale of such consumption allowances that may include pro rata shares, historic production and importation, economic or technical hardship, or other factors deemed relevant by the Administrator.

"(IV) Each person who purchases consumption allowances in a non-auction sale under this subparagraph shall be required to disclose the person or entity sponsoring or benefitting from the purchases if such person or entity is, in whole or in part, other than the purchaser or the purchaser's employer.

"(E) DISCRETION TO WITHHOLD ALLOWANCES.—Nothing in this paragraph prevents the Administrator from exercising discretion to withhold and retire consumption allowances that would otherwise be available for auction or nonauction sale. Not later than 18 months after the date of enactment of this section, the Administrator shall promulgate regulations establishing criteria for withholding and retiring consumption allowances.

"(5) BANKING.—A consumption allowance or destruction offset credit may be used to meet the compliance obligation requirements of paragraph (1) in—

"(A) the vintage year for the allowance or destruction offset credit; or

"(B) any calendar year subsequent to the vintage year for the allowance or destruction offset credit.

"(6) AUCTIONS.—

"(A) INITIAL REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall promulgate regulations governing the auction of allowances

under this section. Such regulations shall include the following requirements:

"(i) FREQUENCY; FIRST AUCTION.—Auctions shall be held one time per year at regular intervals, with the first auction to be held no later than October 31, 2011.

"(ii) AUCTION FORMAT.—Auctions shall follow a single-round, sealed-bid, uniform price format.

"(iii) FINANCIAL ASSURANCE.—The Administrator may establish financial assurance requirements to ensure that auction participants can and will perform on their bids.

"(iv) DISCLOSURE OF BENEFICIAL OWNERSHIP.—Each bidder in the auction shall be required to disclose the person or entity sponsoring or benefitting from the bidder's participation in the auction if such person or entity is, in whole or in part, other than the bidder.

"(v) PUBLICATION OF INFORMATION.—After the auction, the Administrator shall, in a timely fashion, publish the number of bidders, number of winning

bidders, the quantity of allowances sold, and the auction clearing price.

"(vi) BIDDING LIMITS IN 2012.—In the vintage year 2012 auction, no auction participant may, directly or in concert with another participant, bid for or purchase more allowances offered for sale at the auction than the greater of—

"(I) the number of allowances which, when added to the number of allowances available for purchase by the participant in the producer-importer pool non-auction sale, would equal the participant's annual average consumption of class II, group II substances in calendar years 2004, 2005, and 2006; or

"(II) the number of allowances equal to the product of—

"(aa) 1.20 multiplied by the participant's allocation share of the producer-importer pool non-auction sale as determined under paragraph (4)(C)(ii); and

"(bb) the number of vintage year 2012 allowances offered at auction.

"(vii) BIDDING LIMITS IN 2013.—In the vintage year 2013 auction, no auction participant may, directly or in concert with another participant, bid for or purchase more allowances offered for sale at the auction than the product of—

"(I) 1.15 multiplied by the ratio of the total number of vintage year 2012 allowances purchased by the participant from the auction and from the producer-importer pool non-auction sale to the total number of vintage year 2012 allowances in the producer-importer pool; and

"(II) the number of vintage year 2013 allowances offered at auction.

"(viii) BIDDING LIMITS IN SUBSEQUENT YEARS.—In the auctions for vintage year 2014 and subsequent vintage years, no auction participant may, directly or in concert with another participant, bid for or purchase more allowances offered

for sale at the auction than the product of—

"(I) 1.15 multiplied by the ratio of the highest number of allowances required to be held by the participant in any of the three prior vintage years to meet its compliance obligation under paragraph (1) to the total number of allowances in the producer-importer pool for such vintage year; and

"(II) the number of allowances offered at auction for that vintage year.

"(ix) OTHER REQUIREMENTS.—The Administrator may include in the regulations such other requirements or provisions as the Administrator considers necessary to promote effective, efficient, transparent, and fair administration of auctions under this section.

"(B) REVISION OF REGULATIONS.—The Administrator may, at any time, revise the initial regulations promulgated under subparagraph (A) based on the Administrator's experience in administering allowance auctions by

promulgating new regulations. Such revised regulations need not meet the requirements identified in subparagraph (A) if the Administrator determines that an alternative auction design would be more effective, taking into account factors including costs of administration, transparency, fairness, and risks of collusion or manipulation. In determining whether and how to revise the initial regulations under this paragraph, the Administrator shall not consider maximization of revenues to the Federal Government.

"(C) DELEGATION OR CONTRACT.—Pursuant to regulations under this section, the Administrator may, by delegation or contract, provide for the conduct of auctions under the Administrator's supervision by other departments or agencies of the Federal Government or by nongovernmental agencies, groups, or organizations.

"(7) PAYMENTS FOR ALLOWANCES.—

"(A) INITIAL REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall promulgate regulations governing the payment for allow-

ances purchased in auction and non-auction sales under this section. Such regulations shall include the requirement that, in the event that full payment for purchased allowances is not made on the date of purchase, equal payments shall be made one time per calendar quarter with all payments for allowances of a vintage year made by the end of that vintage year.

"(B) REVISION OF REGULATIONS.— The Administrator may, at any time, revise the initial regulations promulgated under subparagraph (A) based on the Administrator's experience in administering collection of payments by promulgating new regulations. Such revised regulations need not meet the requirements identified in subparagraph (A) if the Administrator determines that an alternative payment structure or frequency would be more effective, taking into account factors including cost of administration, transparency, and fairness. In determining whether and how to revise the initial regulations under this paragraph, the Administrator shall not consider maximization of revenues to the Federal Government.

"(C) PENALTIES FOR NON-PAYMENT.—Failure to pay for purchased allowances in accordance with the regulations promulgated pursuant to this paragraph shall be a violation of the requirements of subsection (b). Section 113(c)(3) shall apply in the case of any person who knowingly fails to pay for purchased allowances in accordance with the regulations promulgated pursuant to this paragraph.

"(8) IMPORTED PRODUCTS.—If the United States becomes a party or otherwise adheres to a multilateral agreement, including any amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, which restricts the production or consumption of class II, group II substances—

"(A) as of the date on which such agreement or amendment enters into force, it shall no longer be unlawful for any person to import from a party to such agreement or amendment any product containing any class II, group II substance whose production or consumption is regulated by such agreement or amendment without holding one consumption allowance or one destruction offset credit for each carbon di-

oxide equivalent ton of the class II, group II substance;

"(B) the Administrator shall promulgate regulations within 12 months of the date the United States becomes a party or otherwise adheres to such agreement or amendment, or the date on which such agreement or amendment enters into force, whichever is later, to establish a new baseline for purposes of paragraph (2), which new baseline shall be the original baseline less the carbon dioxide equivalent of the annual average quantity of any class II substances regulated by such agreement or amendment contained in products imported from parties to such agreement or amendment in calendar years 2004, 2005, and 2006;

"(C) as of the date on which such agreement or amendment enters into force, no person importing any product containing any class II, group II substance may, directly or in concert with another person, purchase any consumption allowances for sale by the Administrator for the importation of products from a party to such agreement or amendment that

contain any class II, group II substance restricted by such agreement or amendment; and

"(D) the Administrator may adjust the two allowance pools established in paragraph (4) such that up to 90 percent of the consumption allowances available for a calendar year are placed in the producer-importer pool with the remaining consumption allowances placed in the secondary pool.

"(9) OFFSETS.—

"(A) CHLOROFLUOROCARBON DESTRUCTION.—Within 18 months after the date of enactment of this section, the Administrator shall promulgate regulations to provide for the issuance of offset credits for the destruction, in the calendar year 2012 or later, of chlorofluorocarbons in the United States. The Administrator shall establish and distribute to the destroying entity a quantity of destruction offset credits equal to 0.8 times the number of metric tons of carbon dioxide equivalents of reduction achieved through the destruction. No destruction offset credits shall be established for the destruction of a class II, group II substance.

"(B) DEFINITION.—For purposes of this paragraph, the term 'destruction' means the conversion of a substance by thermal, chemical, or other means to another substance with little or no carbon dioxide equivalent value and no ozone depletion potential.

"(C) REGULATIONS.—The regulations promulgated under this paragraph shall include standards and protocols for project eligibility, certification of destroyers, monitoring, tracking, destruction efficiency, quantification of project and baseline emissions and carbon dioxide equivalent value, and verification. The Administrator shall ensure that destruction offset credits represent real and verifiable destruction of chlorofluorocarbons or other class I or class II, group I, substances authorized under subparagraph (D).

"(D) OTHER SUBSTANCES.—The Administrator may promulgate regulations to add to the list of class I and class II, group I, substances that may be destroyed for destruction offset credits, taking into account a candidate substance's carbon dioxide equivalent value, ozone depletion potential, prevalence in banks in the

United States, and emission rates, as well as the need for additional cost containment under the class II, group II cap and the integrity of the class II, group II cap. The Administrator shall not add a class I or class II, group I substance to the list if the consumption of the substance has not been completely phased-out internationally (except for essential use exemptions or other similar exemptions) pursuant to the Montreal Protocol.

"(E) EXTENSION OF OFFSETS.—(i) At any time after the Administrator promulgates regulations pursuant to subparagraph (A), the Administrator may, pursuant to the requirements of part D of title VII and based on the carbon dioxide equivalent value of the substance destroyed, add the types of destruction projects authorized to receive destruction offset credits under this paragraph to the list of types of projects eligible for offset credits under section 733. If such projects are added to the list under section 733, the issuance of offset credits for such projects under part D of title VII shall be governed by the requirements of such part D, while the issuance of offset credits for such

projects under this paragraph shall be governed by the requirements of this paragraph. Nothing in this paragraph shall affect the issuance of offset credits under section 740.

"(ii) The Administrator shall not make the addition under clause (i) unless the Administrator finds that insufficient destruction is occurring or is projected to occur under this paragraph and that the addition would increase destruction.

"(iii) In no event shall more than one destruction offset credit be issued under title VII and this section for the destruction of the same quantity of a substance.

"(10) LEGAL STATUS OF ALLOWANCES AND CREDITS.—None of the following constitutes a property right:

"(A) A production or consumption allowance.

"(B) A destruction offset credit.

"(c) DEADLINES FOR COMPLIANCE.—Notwithstanding the deadlines specified for class II substances in sections 608, 609, 610, 612, and 613 that occur prior to January 1, 2009, the deadline for promulgating regula-

1 tions under those sections for class II, group II substances
2 shall be January 1, 2012.

3 "(d) EXCEPTIONS FOR ESSENTIAL USES.—Notwith-
4 standing any phase down of production and consumption
5 required by this section, to the extent consistent with any
6 applicable multilateral agreement to which the United
7 States is a party or otherwise adheres, the Administrator
8 may provide the following exceptions for essential uses:

9 "(1) MEDICAL DEVICES.—The Administrator,
10 after notice and opportunity for public comment,
11 and in consultation with the Commissioner of the
12 Food and Drug Administration, may provide an ex-
13 ception for the production and consumption of class
14 II, group II substances solely for use in medical de-
15 vices.

16 "(2) AVIATION AND SPACE VEHICLE SAFETY.—
17 The Administrator, after notice and opportunity for
18 public comment, may authorize the production and
19 consumption of limited quantities of class II, group
20 II substances solely for the purposes of aviation or
21 space vehicle safety if either the Administrator of
22 the Federal Aviation Administration or the Admini-
23 trator of the National Aeronautics and Space Ad-
24 ministration, in consultation with the Administrator,
25 determines that no safe and effective substitute has

been developed and that such authorization is necessary for aviation or space flight safety purposes.

"(e) DEVELOPING COUNTRIES.—Notwithstanding any phase down of production required by this section, the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of class II, group II substances in excess of the amounts otherwise allowable under this section solely for export to, and use in, developing countries. Any production authorized under this subsection shall be solely for purposes of satisfying the basic domestic needs of such countries as provided in applicable international agreements, if any, to which the United States is a party or otherwise adheres.

"(f) NATIONAL SECURITY; FIRE SUPPRESSION, ETC.—The provisions of subsection (f) and paragraphs (1) and (2) of subsection (g) of section 604 shall apply to any consumption and production phase down of class II, group II substances in the same manner and to the same extent, consistent with any applicable international agreement to which the United States is a party or otherwise adheres, as such provisions apply to the substances specified in such subsection.

"(g) ACCELERATED SCHEDULE.—In lieu of section 606, the provisions of paragraphs (1), (2), and (3) of this

subsection shall apply in the case of class II, group II substances.

"(1) IN GENERAL.—The Administrator shall promulgate initial regulations not later than 18 months after the date of enactment of this section, and revised regulations any time thereafter, which establish a schedule for phasing down the consumption (and, if the condition in subsection (b)(1)(B) is met, the production) of class II, group II substances that is more stringent than the schedule set forth in this section if, based on the availability of substitutes, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other factors the Administrator deems relevant, or if the Montreal Protocol, or any applicable international agreement to which the United States is a party or otherwise adheres, is modified or established to include a schedule or other requirements to control or reduce production, consumption, or use of any class II, group II substance more rapidly than the applicable schedule under this section.

"(2) PETITION.—Any person may submit a petition to promulgate regulations under this sub-

section in the same manner and subject to the same procedures as are provided in section 606(b).

"(3) INCONSISTENCY.—If the Administrator determines that the provisions of this section regarding banking, allowance rollover, or destruction offset credits create a significant potential for inconsistency with the requirements of any applicable international agreement to which the United States is a party or otherwise adheres, the Administrator may promulgate regulations restricting the availability of banking, allowance rollover, or destruction offset credits to the extent necessary to avoid such inconsistency.

"(h) EXCHANGE.—Section 607 shall not apply in the case of class II, group II substances. Production and consumption allowances for class II, group II substances may be freely exchanged or sold but may not be converted into allowances for class II, group I substances.

"(i) LABELING.—(1) In applying section 611 to products containing or manufactured with class II, group II substances, in lieu of the words 'destroying ozone in the upper atmosphere' on labels required under section 611 there shall be substituted the words 'contributing to global warming'.

1 "(2) The Administrator may, through rulemaking,
2 exempt from the requirements of section 611 products
3 containing or manufactured with class II, group II sub-
4 stances determined to have little or no carbon dioxide
5 equivalent value compared to other substances used in
6 similar products.

7 "(j) NONESSENTIAL PRODUCTS.—For the purposes
8 of section 610, class II, group II substances shall be regu-
9 lated under section 610(b), except that in applying section
10 610(b) the word 'hydrofluorocarbon' shall be substituted
11 for the word 'chlorofluorocarbon' and the term 'class II,
12 group II' shall be substituted for the term 'class I'. Class
13 II, group II substances shall not be subject to the provi-
14 sions of section 610(d).

15 "(k) INTERNATIONAL TRANSFERS.—In the case of
16 class II, group II substances, in lieu of section 616, this
17 subsection shall apply. To the extent consistent with any
18 applicable international agreement to which the United
19 States is a party or otherwise adheres, including any
20 amendment to the Montreal Protocol, the United States
21 may engage in transfers with other parties to such agree-
22 ment or amendment under the following conditions:

23 "(1) The United States may transfer produc-
24 tion allowances to another party to such agreement
25 or amendment if, at the time of the transfer, the

Administrator establishes revised production limits for the United States accounting for the transfer in accordance with regulations promulgated pursuant to this subsection.

"(2) The United States may acquire production allowances from another party to such agreement or amendment if, at the time of the transfer, the Administrator finds that the other party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in the regulations promulgated pursuant to this subsection.

"(l) RELATIONSHIP TO OTHER LAWS.—

"(1) STATE LAWS.—For purposes of section 116, the requirements of this section for class II, group II substances shall be treated as requirements for the control and abatement of air pollution.

"(2) MULTILATERAL AGREEMENTS.—Section 614 shall apply to the provisions of this section concerning class II, group II substances, except that for the words 'Montreal Protocol' there shall be substituted the words 'Montreal Protocol, or any applicable multilateral agreement to which the United States is a party or otherwise adheres that restricts the production or consumption of class II, group II

1 substances,' and for the words 'Article 4 of the Mon-
2 treal Protocol' there shall be substituted 'any provi-
3 sion of such multilateral agreement regarding trade
4 with non-parties'.

5 "(3) FEDERAL FACILITIES.—For purposes of
6 section 118, the requirements of this section for
7 class II, group II substances and corresponding
8 State, interstate, and local requirements, administra-
9 tive authority, and process and sanctions shall be
10 treated as requirements for the control and abate-
11 ment of air pollution within the meaning of section
12 118.

13 "(m) CARBON DIOXIDE EQUIVALENT VALUE.—(1)
14 In lieu of section 602(e), the provisions of this subsection
15 shall apply in the case of class II, group II substances.
16 Simultaneously with establishing the list of class II, group
17 II substances, and simultaneously with any addition to
18 that list, the Administrator shall publish the carbon diox-
19 ide equivalent value of each listed class II, group II sub-
20 stance, based on a determination of the number of metric
21 tons of carbon dioxide that makes the same contribution
22 to global warming over 100 years as 1 metric ton of each
23 class II, group II substance.

24 "(2) Not later than February 1, 2017, and not less
25 than every 5 years thereafter, the Administrator shall—

"(A) review, and if appropriate, revise the carbon dioxide equivalent values established for class II, group II substances based on a determination of the number of metric tons of carbon dioxide that makes the same contributions to global warming over 100 years as 1 metric ton of each class II, group II substance; and

"(B) publish in the Federal Register the results of that review and any revisions.

"(3) A revised determination published in the Federal Register under paragraph (2)(B) shall take effect for production of class II, group II substances, consumption of class II, group II substances, and importation of products containing class II, group II substances starting on January 1 of the first calendar year starting at least 9 months after the date on which the revised determination was published.

"(4) The Administrator may decrease the frequency of review and revision under paragraph (2) if the Administrator determines that such decrease is appropriate in order to synchronize such review and revisions with any similar review process carried out pursuant to the United Nations Framework Convention on Climate Change, an agreement negotiated under that convention, The Vienna Convention for the Protection of the Ozone Layer, or an

1 agreement negotiated under that convention, except that
2 in no event shall the Administrator carry out such review
3 and revision any less frequently than every 10 years.

4 "(n) REPORTING REQUIREMENTS.—In lieu of sub-
5 sections (b) and (c) of section 603, paragraphs (1) and
6 (2) of this subsection shall apply in the case of class II,
7 group II substances:

8 "(1) IN GENERAL.—On a quarterly basis, or
9 such other basis (not less than annually) as deter-
10 mined by the Administrator, each person who pro-
11 duced, imported, or exported a class II, group II
12 substance, or who imported a product containing a
13 class II, group II substance, shall file a report with
14 the Administrator setting forth the carbon dioxide
15 equivalent amount of the substance that such person
16 produced, imported, or exported, as well as the
17 amount that was contained in products imported by
18 that person, during the preceding reporting period.
19 Each such report shall be signed and attested by a
20 responsible officer. If all other reporting is complete,
21 no such report shall be required from a person after
22 April 1 of the calendar year after such person per-
23 manently ceases production, importation, and expor-
24 tation of the substance, as well as importation of
25 products containing the substance, and so notifies

the Administrator in writing. If the United States becomes a party or otherwise adheres to a multilateral agreement, including any amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, that restricts the production or consumption of class II, group II substances, then, if all other reporting is complete, no such report shall be required from a person with respect to importation from parties to such agreement or amendment of products containing any class II, group II substance restricted by such agreement or amendment, after April 1 of the calendar year following the year during which such agreement or amendment enters into force.

"(2) BASELINE REPORTS FOR CLASS II, GROUP II SUBSTANCES.—

"(A) IN GENERAL.—Unless such information has been previously reported to the Administrator, on the date on which the first report under paragraph (1) of this subsection is required to be filed, each person who produced, imported, or exported a class II, group II substance, or who imported a product containing a class II substance, (other than a substance added to the list of class II, group II substances

after the publication of the initial list of such substances under this section), shall file a report with the Administrator setting forth the amount of such substance that such person produced, imported, exported, or that was contained in products imported by that person, during each of calendar years 2004, 2005, and 2006.

"(B) PRODUCERS.—In reporting under subparagraph (A), each person who produced in the United States a class II substance during calendar years 2004, 2005, or 2006 shall—

"(i) report all acquisitions or purchases of class II substances during each of calendar years 2004, 2005, and 2006 from all other persons who produced in the United States a class II substance during calendar years 2004, 2005, or 2006, and supply evidence of such acquisitions and purchases as deemed necessary by the Administrator; and

"(ii) report all transfers or sales of class II substances during each of calendar years 2004, 2005, and 2006 to all other persons who produced in the United States

a class II substance during calendar years 2004, 2005, or 2006, and supply evidence of such transfers and sales as deemed necessary by the Administrator.

"(C) ADDED SUBSTANCES.—In the case of a substance added to the list of class II, group II substances after publication of the initial list of such substances under this section, each person who produced, imported, exported, or imported products containing such substance in calendar year 2004, 2005, or 2006 shall file a report with the Administrator within 180 days after the date on which such substance is added to the list, setting forth the amount of the substance that such person produced, imported, and exported, as well as the amount that was contained in products imported by that person, in calendar years 2004, 2005, and 2006.

"(o) STRATOSPHERIC OZONE AND CLIMATE PROTECTION FUND.—

"(1) IN GENERAL.—There is established in the Treasury of the United States a Stratospheric Ozone and Climate Protection Fund.

"(2) DEPOSITS.—The Administrator shall deposit all proceeds from the auction and non-auction

sale of allowances under this section into the Stratospheric Ozone and Climate Protection Fund.

"(3) USE.—Amounts deposited into the Stratospheric Ozone and Climate Protection Fund shall be available, subject to appropriations, exclusively for the following purposes:

"(A) RECOVERY, RECYCLING, AND RECLAMATION.—The Administrator may utilize funds to establish a program to incentivize the recovery, recycling, and reclamation of any Class II substances in order to reduce emissions of such substances.

"(B) MULTILATERAL FUND.—If the United States becomes a party or otherwise adheres to a multilateral agreement, including any amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, which restricts the production or consumption of class II, group II substances, the Administrator may utilize funds to meet any related contribution obligation of the United States to the Multilateral Fund for the Implementation of the Montreal Protocol or similar multilateral fund established under such multilateral agreement.

"(C) BEST-IN-CLASS APPLIANCES DEPLOYMENT PROGRAM.—The Secretary of Energy is authorized to utilize funds to carry out the purposes of section 214 of the American Clean Energy and Security Act of 2009.

"(D) LOW GLOBAL WARMING PRODUCT TRANSITION ASSISTANCE PROGRAM.—

"(i) IN GENERAL.—The Administrator, in consultation with the Secretary of Energy, may utilize funds in fiscal years 2012 through 2022 to establish a program to provide financial assistance to manufacturers of products containing class II, group II substances to facilitate the transition to products that contain or utilize alternative substances with no or low carbon dioxide equivalent value and no ozone depletion potential.

"(ii) DEFINITION.—In this subparagraph, the term 'products' means refrigerators, freezers, dehumidifiers, air conditioners, foam insulation, technical aerosols, fire protection systems, and semiconductors.

"(iii) FINANCIAL ASSISTANCE.—The Administrator may provide financial assistance to manufacturers pursuant to clause (i) for—

"(I) the design and configuration of new products that use alternative substances with no or low carbon dioxide equivalent value and no ozone depletion potential; and

"(II) the redesign and retooling of facilities for the manufacture of products in the United States that use alternative substances with no or low carbon dioxide equivalent value and no ozone depletion potential.

"(iv) REPORTS.—For any fiscal year during which the Administrator provides financial assistance pursuant to this subparagraph, the Administrator shall submit a report to the Congress within 3 months of the end of such fiscal year detailing the amounts, recipients, specific purposes, and results of the financial assistance provided.".

(b) TABLE OF CONTENTS.—The table of contents of title VI of the Clean Air Act (42 U.S.C. 7671 et seq.) is amended by adding the following new item at the end thereof:

"Sec. 619. Hydrofluorocarbons (HFCs).".

(c) FIRE SUPPRESSION AGENTS.—Section 605(a) of the Clean Air Act (42 U.S.C. 7671(a)) is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

(3) by adding the following new paragraph after paragraph (3):

"(4) is listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612(c).".

(d) MOTOR VEHICLE AIR CONDITIONERS.—

(1) Section 609(e) of the Clean Air Act (42 U.S.C. 7671h(e)) is amended by inserting ", group I" after each reference to "class II" in the text and heading.

(2) Section 609 of the Clean Air Act (42 U.S.C. 7671h) is amended by adding the following new subsection after subsection (e):

"(f) CLASS II, GROUP II SUBSTANCES.—

1 "(1) REPAIR.—The Administrator may promul-
2 gate regulations establishing requirements for repair
3 of motor vehicle air conditioners prior to adding a
4 class II, group II substance.
5 "(2) SMALL CONTAINERS.—(A) The Adminis-
6 trator may promulgate regulations establishing serv-
7 icing practices and procedures for recovery of class
8 II, group II substances from containers which con-
9 tain less than 20 pounds of such class II, group II
10 substances.
11 "(B) Not later than 18 months after enactment
12 of this subsection, the Administrator shall either
13 promulgate regulations requiring that containers
14 which contain less than 20 pounds of a class II,
15 group II substance be equipped with a device or
16 technology that limits refrigerant emissions and
17 leaks from the container and limits refrigerant emis-
18 sions and leaks during the transfer of refrigerant
19 from the container to the motor vehicle air condi-
20 tioner or issue a determination that such require-
21 ments are not necessary or appropriate.
22 "(C) Not later than 18 months after enactment
23 of this subsection, the Administrator shall promul-
24 gate regulations establishing requirements for con-
25 sumer education materials on best practices associ-

ated with the use of containers which contain less than 20 pounds of a class II, group II substance and prohibiting the sale or distribution, or offer for sale or distribution, of any class II, group II substance in any container which contains less than 20 pounds of such class II, group II substance, unless consumer education materials consistent with such requirements are displayed and available at point-of-sale locations, provided to the consumer, or included in or on the packaging of the container which contain less than 20 pounds of a class II, group II substance.

''(D) The Administrator may, through rulemaking, extend the requirements established under this paragraph to containers which contain 30 pounds or less of a class II, group II substance if the Administrator determines that such action would produce significant environmental benefits.

''(3) RESTRICTION OF SALES.—Effective January 1, 2014, no person may sell or distribute or offer to sell or distribute or otherwise introduce into interstate commerce any motor vehicle air conditioner refrigerant in any size container unless the substance has been found acceptable for use in a motor vehicle air conditioner under section 612.''.

(e) SAFE ALTERNATIVES POLICY.—Section 612(e) of the Clean Air Act (42 U.S.C. 7671k(e)) is amended by inserting ''or class II'' after each reference to ''class I''.

SEC. 333. BLACK CARBON.

(a) DEFINITION.—As used in this section, the term ''black carbon'' means primary light absorbing aerosols, as defined by the Administrator, based on the best available science.

(b) BLACK CARBON ABATEMENT REPORT.—Not later than one year after the date of enactment of this section, the Administrator shall, in consultation with other appropriate Federal agencies, submit to Congress a report regarding black carbon emissions. The report shall include the following:

(1) A summary of the current information and research that identifies—

(A) an inventory of the major sources of black carbon emissions in the United States and throughout the world, including—

(i) an estimate of the quantity of current and projected future emissions; and

(ii) the net climate forcing of the emissions from such sources, including consideration of co-emissions of other pollutants;

(B) effective and cost-effective control technologies, operations, and strategies for additional domestic and international black carbon emissions reductions, such as diesel retrofit technologies on existing on-road, non-road, and stationary engines and programs to address residential cookstoves, and forest and agriculture-based burning;

(C) potential metrics and approaches for quantifying the climatic effects of black carbon emissions, including its radiative forcing and warming effects, that may be used to compare the climate benefits of different mitigation strategies, including an assessment of the uncertainty in such metrics and approaches; and

(D) the public health and environmental benefits associated with additional controls for black carbon emissions.

(2) Recommendations regarding—

(A) development of additional emissions monitoring techniques and capabilities, modeling, and other black carbon-related areas of study;

(B) areas of focus for additional study of technologies, operations, and strategies with the

greatest potential to reduce emissions of black carbon and associated public health, economic, and environmental impacts associated with these emissions; and

(C) actions, in addition to those identified by the Administrator under section 851 of the Clean Air Act (as added by subsection (c)), the Federal Government may take to encourage or require reductions in black carbon emissions.

(c) BLACK CARBON MITIGATION.—Title VIII of the Clean Air Act, as added by section 331 of this Act, and amended by section 222 of this Act, is further amended by adding after part D the following new part:

"PART E—BLACK CARBON

"SEC. 851. BLACK CARBON.

''(a) DOMESTIC BLACK CARBON MITIGATION.—Not later than 18 months after the date of enactment of this section, the Administrator, taking into consideration the public health and environmental impacts of black carbon emissions, including the effects on global and regional warming, the Arctic, and other snow and ice-covered surfaces, shall propose regulations under the existing authorities of this Act to reduce emissions of black carbon or propose a finding that existing regulations promulgated pursuant to this Act adequately regulate black carbon emis-

sions. Not later than two years after the date of enactment of this section, the Administrator shall promulgate final regulations under the existing authorities of this Act or finalize the proposed finding. Such regulations shall not apply to specific types, classes, categories, or other suitable groupings of emissions sources that the Administrator finds are subject to adequate regulation.

"(b) INTERNATIONAL BLACK CARBON MITIGATION.—

"(1) REPORT.—Not later than one year after the date of enactment of this section, the Administrator, in coordination with the Secretary of State and other appropriate Federal agencies, shall transmit a report to Congress on the amount, type, and direction of all present United States financial, technical, and related assistance to foreign countries to reduce, mitigate, and otherwise abate black carbon emissions.

"(2) OTHER OPPORTUNITIES.—The report required under paragraph (1) shall also identify opportunities and recommendations, including action under existing authorities, to achieve significant black carbon emission reductions in foreign countries through technical assistance or other approaches to—

"(A) promote sustainable solutions to bring clean, efficient, safe, and affordable stoves, fuels, or both stoves and fuels to residents of developing countries that are reliant on solid fuels such as wood, dung, charcoal, coal, or crop residues for home cooking and heating, so as to help reduce the public health, environmental, and economic impacts of black carbon emissions from these sources by—

"(i) identifying key regions for large-scale demonstration efforts, and key partners in each such region; and

"(ii) developing for each such region a large-scale implementation strategy with a goal of collectively reaching 20,000,000 homes over 5 years with interventions that will—

"(I) increase stove efficiency by over 50 percent (or such other goal as determined by the Administrator);

"(II) reduce emissions of black carbon by over 60 percent (or such other goal as determined by the Administrator); and

"(III) reduce the incidence of severe pneumonia in children under 5 years old by over 30 percent (or such other goal as determined by the Administrator);

"(B) make technological improvements to diesel engines and provide greater access to fuels that emit less or no black carbon;

"(C) reduce unnecessary agricultural or other biomass burning where feasible alternatives exist;

"(D) reduce unnecessary fossil fuel burning that produces black carbon where feasible alternatives exist;

"(E) reduce other sources of black carbon emissions; and

"(F) improve capacity to achieve greater compliance with existing laws to address black carbon emissions.".

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 334. STATES.

Section 116 of the Clean Air Act (42 U.S.C. 7416) is amended by adding the following at the end thereof:

"For the purposes of this section, the phrases 'standard or limitation respecting emissions of air pollutants' and 'requirements respecting control or abatement of air pollution' shall include any provision to: cap greenhouse gas emissions, require surrender to the State or a political subdivision thereof of emission allowances or offset credits established or issued under this Act, and require the use of such allowances or credits as a means of demonstrating compliance with requirements established by a State or political subdivision thereof.".

SEC. 335. STATE PROGRAMS.

Title VIII of the Clean Air Act, as added by section 331 of this Act and amended by several sections of this Act, is further amended by adding after part E (as added by section 333(c) of this Act) the following new part:

"PART F—MISCELLANEOUS

"SEC. 861. STATE PROGRAMS.

"Notwithstanding section 116, no State or political subdivision thereof shall implement or enforce a cap and trade program that covers any capped emissions emitted during the years 2012 through 2017. For purposes of this section, the term 'cap and trade program' means a system of greenhouse gas regulation under which a State or political subdivision issues a limited number of tradable instruments in the nature of emission allowances and requires

that sources within its jurisdiction surrender such tradeable instruments for each unit of greenhouse gases emitted during a compliance period. For purposes of this section, a 'cap-and-trade program' does not include a target or limit on greenhouse gas emissions adopted by a State or political subdivision that is implemented other than through the issuance and surrender of a limited number of tradable instruments in the nature of emission allowances, nor does it include any other standard, limit, regulation, or program to reduce greenhouse gas emissions that is not implemented through the issuance and surrender of a limited number of tradeable instruments in the nature of emission allowances. For purposes of this section, the term 'cap and trade program' does not include, among other things, fleet-wide motor vehicle emission requirements that allow greater emissions with increased vehicle production, or requirements that fuels, or other products, meet an average pollution emission rate or lifecycle greenhouse gas standard.

"SEC. 862. GRANTS FOR SUPPORT OF AIR POLLUTION CONTROL PROGRAMS.

''The Administrator is authorized to make grants to air pollution control agencies pursuant to section 105 for purposes of assisting in the implementation of programs

to address global warming established under the Safe Climate Act.''.

SEC. 336. ENFORCEMENT.

(a) REMAND.—Section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)) is amended by adding the following new paragraphs at the end thereof:

''(3) If the court determines that any action of the Administrator is arbitrary, capricious, or otherwise unlawful, the court may remand such action, without vacatur, if vacatur would impair or delay protection of the environment or public health or otherwise undermine the timely achievement of the purposes of this Act.

''(4) If the court determines that any action of the Administrator is arbitrary, capricious, or otherwise unlawful, and remands the matter to the Administrator, the Administrator shall complete final action on remand within an expeditious time period no longer than the time originally allowed for the action or one year, whichever is less, unless the court on motion determines that a shorter or longer period is necessary, appropriate, and consistent with the purposes of this Act. The court of appeals shall have jurisdiction to enforce a deadline for action on remand under this subparagraph.''.

(b) PETITION FOR RECONSIDERATION.—Section 307(d)(7)(B) of the Clean Air Act (42 U.S.C. 7607(d)(7)(B)) is amended as follows:

(1) By inserting after the second sentence ''If a petition for reconsideration is filed, the Administrator shall take final action on such petition, including promulgation of final action either revising or determining not to revise the action for which reconsideration is sought, within 150 days after the petition is received by the Administrator or the petition shall be deemed denied for the purpose of judicial review.''.

(2) By amending the third sentence to read as follows: ''Such person may seek judicial review of such denial, or of any other final action, by the Administrator, in response to a petition for reconsideration, in the United States court of appeals for the appropriate circuit (as provided in subsection (b)).''.

SEC. 337. CONFORMING AMENDMENTS.

(a) FEDERAL ENFORCEMENT.—Section 113 of the Clean Air Act (42 U.S.C. 7413) is amended as follows:

(1) In subsection (a)(3), by striking ''or title VI,'' and inserting ''title VI, title VII, or title VIII''.

(2) In subsection (b), by striking ''or a major stationary source'' and inserting ''a major stationary

source, or a covered EGU under title VIII'' in the material preceding paragraph (1).

(3) In paragraph (2) of subsection (b), by striking ''or title VI'' and inserting ''title VI, title VII, or title VIII''.

(4) In subsection (c)—

(A) in the first sentence of paragraph (1), by striking ''or title VI (relating to stratospheric ozone control),'' and inserting ''title VI, title VII, or title VIII,''; and

(B) in the first sentence of paragraph (3), by striking ''or VI'' and inserting ''VI, VII, or VIII''.

(5) In subsection (d)(1)(B), by striking ''or VI'' and inserting ''VI, VII, or VIII''.

(6) In subsection (f), in the first sentence, by striking ''or VI'' and inserting ''VI, VII, or VIII''.

(b) RETENTION OF STATE AUTHORITY.—Section 116 of the Clean Air Act (42 U.S.C. 7416) is amended as follows:

(1) By striking ''and 233'' and inserting ''233''.

(2) By striking ''of moving sources)'' and inserting ''of moving sources), and 861 (preempting certain State greenhouse gas programs for a limited time)''.

(c) INSPECTIONS, MONITORING, AND ENTRY.—Section 114(a) of the Clean Air Act (42 U.S.C. 7414(a)) is amended by striking ''section 112,'' and all that follows through ''(ii)'' and inserting the following: ''section 112, or any regulation of greenhouse gas emissions under title VII or VIII, (ii)''.

(d) ENFORCEMENT.—Subsection (f) of section 304 of the Clean Air Act (42 U.S.C. 7604(f)) is amended as follows:

(1) By striking ''; or'' at the end of paragraph (3) thereof and inserting a comma.

(2) By striking the period at the end of paragraph (4) thereof and inserting '', or''.

(3) By adding the following after paragraph (4) thereof:

''(5) any requirement of title VII or VIII.''.

(e) ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW.—Section 307 of the Clean Air Act (42 U.S.C. 7607) is amended as follows:

(1) In subsection (a), by striking '', or section 306'' and inserting ''section 306, or title VII or VIII''.

(2) In subsection (b)(1)—

(A) by striking ''‚,'' and inserting '','' in each place such punctuation appears; and

(B) by striking ''section 120,'' in the first sentence and inserting ''section 120, any final action under title VII or VIII,''.

(3) In subsection (d)(1) by amending subparagraph (S) to read as follows:

''(S) the promulgation or revision of any regulation under title VII or VIII,''.

SEC. 338. DAVIS-BACON COMPLIANCE.

(a) IN GENERAL.—Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, to receive emission allowances or funding under this Act, or the amendments made by this Act, the recipient shall provide reasonable assurances that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act, or the amendments made by this Act, or by any entity established in accordance with this Act, or the amendments made by this Act, including the Carbon Storage Research Corporation, will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act''). With respect to the labor

standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

(b) EXEMPTION.—Neither subsection (a) nor the requirements of subchapter IV of chapter 31 of title 40, United States Code, shall apply to retrofitting of the following:

(1) Single family homes (both attached and detached) under section 202.

(2) Owner-occupied residential units in larger buildings that have their own dedicated space-conditioning systems under section 202.

(3) Residential buildings (as defined in section 202(a)(5)) if designed for residential use by less than 4 families.

(4) Nonresidential buildings (as defined in section 202(a)(1)) if the net interior space of such nonresidential building is less than 6,500 square feet.

SEC. 339. NATIONAL STRATEGY FOR DOMESTIC BIOLOGICAL CARBON SEQUESTRATION.

Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of En-

ergy, the Secretary of Agriculture, the Secretary of the Interior, and the heads of such other relevant Federal agencies as the President may designate, shall submit to Congress a report setting forth a unified and comprehensive strategy to address the key legal, regulatory, technological, and other barriers to maximizing the potential for sustainable biological sequestration of carbon within the United States.

Subtitle D—Carbon Market Assurance

SEC. 341. CARBON MARKET ASSURANCE.

(a) AMENDMENT.—The Federal Power Act (16 U.S.C. 791a and following) is amended by adding at the end the following:

"PART IV—CARBON MARKET ASSURANCE

"SEC. 401. OVERSIGHT AND ASSURANCE OF CARBON MARKETS.

"(a) DEFINITIONS.—In this section:

"(1) CONTRACT OF SALE.—The term 'contract of sale' includes sales, agreements of sale, and agreements to sell.

"(2) COVERED ENTITY.—The term 'covered entity' shall have the meaning given in section 700 of the Clean Air Act.

"(3) FUTURE DELIVERY.—The term 'future delivery' does not include any sale of any cash commodity for deferred shipment or delivery.

"(4) OFFSET CREATION CONTRACT.—The term 'offset creation contract' mean a written agreement for the origination and development of an offset project, and the related issuance of offset credits, pursuant to title VII of the Clean Air Act.

"(5) REGULATED ALLOWANCE.—The term 'regulated allowance' means any emission allowance, compensatory allowance, offset credit, or Federal renewable electricity credit established or issued under the American Clean Energy and Security Act of 2009.

"(6) REGULATED ALLOWANCE DERIVATIVE.—The term 'regulated allowance derivative' means an instrument that is, or includes, an instrument—

"(A) which—

"(i) is of the character of, or is commonly known to the trade as, a 'put option', 'call option', 'privilege', 'indemnity', 'advance guaranty', 'decline guaranty', or 'swap agreement'; or

"(ii) is a contract of sale for future delivery other than an offset creation contract; and

"(B) the value of which, in whole or in part, is expressly linked to the price of a regulated allowance or another regulated allowance derivative.

"(7) REGULATED INSTRUMENT.—The term 'regulated instrument' means a regulated allowance or a regulated allowance derivative.

"(b) REGULATED ALLOWANCE MARKET.—

"(1) AUTHORITY.—The Commission shall promulgate regulations for the establishment, operation, and oversight of markets for regulated allowances not later than 18 months after the date of the enactment of this section, and from time to time thereafter as may be appropriate.

"(2) REGULATIONS.—The regulations promulgated pursuant to paragraph (1) shall—

"(A) provide for effective and comprehensive market oversight;

"(B) prohibit fraud, market manipulation (including an entity's fraudulent or manipulative conduct with respect to regulated allowance derivatives that benefits the entity in regulated

allowance markets), and excess speculation, and provide measures to limit unreasonable fluctuation in the prices of regulated allowances;

"(C) facilitate compliance with title VII of the Clean Air Act by covered entities;

"(D) ensure market transparency and recordkeeping deemed necessary and appropriate by the Commission to provide for efficient price discovery; prevention of fraud, market manipulation, and excess speculation; and compliance with title VII of the Clean Air Act and section 610 of the Public Utility Regulatory Policies Act of 1978;

"(E) as necessary, ensure that position limitations for individual market participants are established with respect to each class of regulated allowances;

"(F) as necessary, ensure that margin requirements are established for each class of regulated allowances;

"(G) provide for the formation and operation of a fair, orderly and liquid national market system that allows for the best execution in the trading of regulated allowances;

"(H) limit or eliminate counterparty risks, market power concentration risks, and other risks associated with over-the-counter trading; and

"(I) establish standards for qualification as, and operation of, trading facilities for regulated allowances;

"(J) establish standards for qualification as, and operation of, clearing organizations for trading facilities for regulated allowances; and

"(K) include such other requirements as necessary to preserve market integrity and facilitate compliance with title VII of the Clean Air Act and section 610 of the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated under such title and such section.

"(3) ENFORCEMENT.—

"(A) IN GENERAL.—If the Commission determines, after notice and an opportunity for a hearing on the record, that any entity has violated any rule or order issued by the Commission under this subsection, the Commission may issue an order—

"(i) prohibiting the entity from trading on a trading facility for regulated allowances registered with the Commission, and requiring all such facilities to refuse the entity all privileges for such period as may be specified in the order;

"(ii) if the entity is registered with the Commission in any capacity, suspending for a period of not more than 6 months, or revoking, the registration of the entity;

"(iii) assessing the entity a civil penalty of not more than $1,000,000 per day per violation for as long as the violation continues (and in determining the amount of a civil penalty, the Commission shall take into account the nature and seriousness of the violation and the efforts to remedy the violation); and

"(iv) requiring disgorgement of unjust profits, restitution to entities harmed by the violation as determined by the Commission, or both.

"(B) AUTHORITY TO SUSPEND OR REVOKE REGISTRATION.—The Commission may suspend

for a period of not more than 6 months, or revoke, the registration of a trading facility for regulated allowances or of a clearing organization registered by the Commission if, after notice and opportunity for a hearing on the record, the Commission finds that—

"(i) the entity violated any rule or order issued by the Commission under this subsection; or

"(ii) a director, officer, employee, or agent of the entity has violated any rule or order issued by the Commission under this subsection.

"(C) CEASE AND DESIST PROCEEDINGS.—

"(i) IN GENERAL.—If the Commission determines that any entity may be violating, may have violated, or may be about to violate any provision of this part, or any regulation promulgated by, or any restriction, condition, or order made or imposed by, the Commission under this Act, and if the Commission finds that the alleged violation or threatened violation, or the continuation of the violation, is likely to result in significant harm to covered entities or

market participants, or significant harm to the public interest, the Commission may issue a temporary order requiring the entity—

"(I) to cease and desist from the violation or threatened violation;

"(II) to take such action as is necessary to prevent the violation or threatened violation; and

"(III) to prevent, as the Commission determines to be appropriate—

"(aa) significant harm to covered entities or market participants;

"(bb) significant harm to the public interest; and

"(cc) frustration of the ability of the Commission to conduct the proceedings or to redress the violation at the conclusion of the proceedings.

"(ii) TIMING OF ENTRY.—An order issued under clause (i) shall be entered only after notice and opportunity for a hearing, unless the Commission determines

that notice and hearing before entry would be impracticable or contrary to the public interest.

"(iii) EFFECTIVE DATE.—A temporary order issued under clause (i) shall—

"(I) become effective upon service upon the entity; and

"(II) unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, remain effective and enforceable pending the completion of the proceedings.

"(D) PROCEEDINGS REGARDING DISSIPATION OR CONVERSION OF ASSETS.—

"(i) IN GENERAL.—In a proceeding involving an alleged violation of a regulation or order promulgated or issued by the Commission, if the Commission determines that the alleged violation or related circumstances are likely to result in significant dissipation or conversion of assets, the Commission may issue a temporary order requiring the respondent to take

1 such action as is necessary to prevent the
2 dissipation or conversion of assets.
3 "(ii) TIMING OF ENTRY.—An order
4 issued under clause (i) shall be entered
5 only after notice and opportunity for a
6 hearing, unless the Commission determines
7 that notice and hearing before entry would
8 be impracticable or contrary to the public
9 interest.
10 "(iii) EFFECTIVE DATE.—A tem-
11 porary order issued under clause (i)
12 shall—
13 "(I) become effective upon serv-
14 ice upon the respondent; and
15 "(II) unless set aside, limited, or
16 suspended by the Commission or a
17 court of competent jurisdiction, re-
18 main effective and enforceable pend-
19 ing the completion of the proceedings.
20 "(E) REVIEW OF TEMPORARY ORDERS.—
21 "(i) APPLICATION FOR REVIEW.—At
22 any time after a respondent has been
23 served with a temporary cease-and-desist
24 order pursuant to subparagraph (C) or
25 order regarding the dissipation or conver-

sion of assets pursuant to subparagraph (D), the respondent may apply to the Commission to have the order set aside, limited, or suspended.

"(ii) NO PRIOR HEARING.—If a respondent has been served with a temporary order entered without a prior hearing of the Commission—

"(I) the respondent may, not later than 10 days after the date on which the order was served, request a hearing on the application; and

"(II) the Commission shall hold a hearing and render a decision on the application at the earliest practicable time.

"(iii) JUDICIAL REVIEW.—

"(I) IN GENERAL.—An entity shall not be required to submit a request for rehearing of a temporary order before seeking judicial review in accordance with this subparagraph.

"(II) TIMING OF REVIEW.—Not later than 10 days after the date on which a respondent is served with a

temporary cease-and-desist order entered with a prior hearing of the Commission, or 10 days after the date on which the Commission renders a decision on an application and hearing under clause (i) with respect to any temporary order entered without such a prior hearing—

"(aa) the respondent may obtain a review of the order in a United States circuit court having jurisdiction over the circuit in which the respondent resides or has a principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order; and

"(bb) the court shall have jurisdiction to enter such an order.

"(III) NO PRIOR HEARING.—A respondent served with a temporary

order entered without a prior hearing of the Commission may not apply to the applicable court described in subclause (II) except after a hearing and decision by the Commission on the application of the respondent under clauses (i) and (ii).

"(iv) PROCEDURES.—Section 222 and Part III shall apply to—

"(I) an application for review of an order under clause (i); and

"(II) an order subject to review under clause (iii).

"(v) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under clause (iii) shall not, unless specifically ordered by the court, operate as a stay of the order of the Commission.

"(F) ACTIONS TO COLLECT CIVIL PENALTIES.—If any person fails to pay a civil penalty assessed under this subsection after an order assessing the penalty has become final and unappealable, the Commission shall bring

1 an action to recover the amount of the penalty
2 in any appropriate United States district court.
3 "(4) TRANSACTION FEES.—
4 "(A) IN GENERAL.—The Commission
5 shall, in accordance with this paragraph, estab-
6 lish and collect transaction fees designed to re-
7 cover the costs to the Federal Government of
8 the supervision and regulation of regulated al-
9 lowance markets and market participants, in-
10 cluding related costs for enforcement activities,
11 policy and rulemaking activities, administration,
12 legal services, and international regulatory ac-
13 tivities.
14 "(B) INITIAL FEE RATE.—Each trading
15 facility on or through which regulated allow-
16 ances are transacted shall pay to the Commis-
17 sion a fee at a rate of not more than $15 per
18 $1,000,000 of the aggregate dollar amount of
19 sales of regulated allowances transacted
20 through the facility.
21 "(C) ANNUAL ADJUSTMENT OF FEE
22 RATE.—The Commission shall, on an annual
23 basis—
24 "(i) assess the rate at which fees are
25 to be collected as necessary to meet the

cost recovery requirement in subparagraph (A); and

"(ii) consistent with subparagraph (B), adjust the rate as necessary in order to meet the requirement.

"(D) REPORT ON ADEQUACY OF FEES IN RECOVERING COSTS.—The Commission, shall, on an annual basis, report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the adequacy of the transaction fees in providing funding for the Commission to regulate the regulated allowance markets.

"(5) JUDICIAL REVIEW.—Judicial review of actions taken by the Commission under this subsection shall be pursuant to part III.

"(6) INFORMATION-SHARING.—Within 6 months after a Federal agency with jurisdiction over regulated allowance derivatives is delegated authority pursuant to subsection (c)(1), the agency shall enter into a memorandum of understanding with the Commission relating to information sharing, which shall include provisions ensuring that information requests to markets within the respective jurisdiction

of the agency are properly coordinated to facilitate, among other things, effective information-sharing while minimizing duplicative information requests, and provisions regarding the treatment of proprietary information.

"(7) ADDITIONAL EMPLOYEES REPORT AND APPOINTMENT.—Within 18 months after the date of the enactment of this section, the Commission shall submit to the President, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, a report that contains recommendations as to how many additional employees would be necessary to provide robust oversight and enforcement of the regulations promulgated under this subsection. As soon as practicable after the completion of the report, subject to appropriations, the Commission shall appoint the recommended number of additional employees for such purposes.

"(c) DELEGATION OF AUTHORITY BY THE PRESIDENT.—

"(1) DELEGATION.—The President, taking into consideration the recommendations of the interagency working group established in subsection (d), shall delegate to members of the working group and

the heads of other appropriate Federal agencies the authority to promulgate regulations for the establishment, operation, and oversight of all markets for regulated allowance derivatives.

"(2) REGULATIONS.—The regulations promulgated pursuant to paragraph (1) shall—

"(A) provide for effective and comprehensive market oversight;

"(B) prohibit fraud, market manipulation, and excess speculation, and provide measures to limit unreasonable fluctuation in the prices of regulated allowance derivatives;

"(C) facilitate compliance with title VII of the Clean Air Act by covered entities;

"(D) ensure market transparency and recordkeeping necessary to provide for efficient price discovery; prevention of fraud, market manipulation, and excess speculation; and compliance with title VII of the Clean Air Act and section 610 of the Public Utility Regulatory Policies Act of 1978;

"(E) ensure that position limitations for individual market participants are established with respect to each regulated allowance derivative and aggregate position limitations for indi-

vidual market participants are established with respect to all regulated allowance derivative markets;

"(F) ensure that margin requirements are established for each regulated allowance derivative;

"(G) provide for the formation and operation of a market system that allows for best execution in the trading of regulated allowance derivatives;

"(H) to the extent the regulations deviate from the rule set forth in paragraph (4)(B), limit or eliminate counterparty risks, market power concentration risks, and other risks associated with over-the-counter trading, and promulgate reporting and market transparency rules for large traders;

"(I) ensure that market participants do not evade position limits or otherwise undermine the integrity and effectiveness of the regulations promulgated under subparagraph (C) through participation in markets not subject to the position limits and regulations;

"(J) establish standards, as necessary, for qualification as, and operation of, trading facilities for regulated allowance derivatives;

"(K) establish standards, as necessary, for qualification as, and operation of, clearing organizations for trading facilities for regulated allowance derivatives;

"(L) provide boards of trade designated as contract markets under the Commodity Exchange Act, and market participants, with an adequate transition period for compliance with any new regulatory requirements established under this paragraph;

"(M) determine whether and to what extent offset creation contracts, to the extent incorporating regulated allowance derivatives, should be governed by the same regulations that apply to other regulated allowance derivatives; and

"(N) include such other requirements as necessary to preserve market integrity and facilitate compliance with title VII of the Clean Air Act and section 610 of the Public Utility Regulatory Policies Act of 1978 and the regula-

1 tions promulgated under such title and such
2 section.
3 "(3) DEADLINE.—The agencies authorized to
4 promulgate regulations for the establishment, oper-
5 ation, and oversight of markets for regulated allow-
6 ance derivatives pursuant to paragraph (1) shall
7 promulgate such regulations not later than 18
8 months after the date of the enactment of this sec-
9 tion, and from time to time thereafter as may be ap-
10 propriate.
11 "(4) DEFAULT RULES.—
12 "(A) An individual market participant, di-
13 rectly or in concert with another participant,
14 shall not control more than 10 percent of the
15 open interest in any regulated allowance deriva-
16 tive.
17 "(B) All contracts for the purchase or sale
18 of any regulated allowance derivative shall be
19 executed on or through a board of trade des-
20 ignated as a contract market under the Com-
21 modity Exchange Act.
22 "(C) To the extent that regulations pro-
23 mulgated under this subsection provide dif-
24 ferent rules with respect to the matters de-
25 scribed in subparagraph (A) or (B), the regula-

tions shall supersede subparagraph (A) or (B), as the case may be.

"(d) WORKING GROUP.—

"(1) ESTABLISHMENT.—Not later than 30 days after the date of the enactment of this section, the President shall establish an interagency working group on carbon market oversight, which shall include the Administrator of the Environmental Protection Agency and representatives of other relevant agencies, to make recommendations to the President regarding proposed regulations for the establishment, operation, and oversight of markets for regulated allowance derivatives.

"(2) REPORT.—Not later than 180 days after the date of the enactment of this section, and biennially thereafter, the interagency working group shall submit a written report to the President and Congress that includes its recommendations to the President regarding proposed regulations for the establishment, operation, and oversight of markets for regulated allowance derivatives and any recommendations to Congress for statutory changes needed to ensure the establishment, operation, and oversight of transparent, fair, stable, and efficient markets for regulated allowance derivatives.

1 "(e) ENFORCEMENT OF REGULATIONS.—Each Fed-
2 eral agency that promulgates under subsection (c) a regu-
3 lation of conduct with respect to a regulated allowance de-
4 rivative shall have the same authority to enforce compli-
5 ance with the regulation as the Commodity Futures Trad-
6 ing Commission has to enforce compliance with any regu-
7 lation of similar conduct with respect to a contract, agree-
8 ment, or transaction over which the Commodity Futures
9 Trading Commission has jurisdiction, except that any en-
10 forcement by the Federal Energy Regulatory Commission
11 shall be pursuant to section 222 and Part III.

12 "(f) PENALTY FOR FRAUD AND FALSE OR MIS-
13 LEADING STATEMENTS.—A person convicted under sec-
14 tion 1041 of title 18, United States Code, may be prohib-
15 ited from holding or trading regulated allowances for a
16 period of not more than 5 years pursuant to the regula-
17 tions promulgated under this section, except that, if the
18 person is a covered entity, the person shall be allowed to
19 hold sufficient regulated allowances to meet its compliance
20 obligations.

21 "(g) RELATION TO STATE LAW.—Nothing in this
22 section shall preclude, diminish or qualify any authority
23 of a State or political subdivision thereof to adopt or en-
24 force any unfair competition, antitrust, consumer protec-
25 tion, securities, commodities or any other law or regula-

tion, except that no such State law or regulation may relieve any person of any requirement otherwise applicable under this section.

"(h) MARKET REPORTS.—

"(1) COLLECTION AND ANALYSIS OF INFORMATION.—The Commission, in conjunction with the Federal agency with jurisdiction over regulated allowance derivatives pursuant to subsection (c)(1), shall, on a continuous basis, collect and analyze the following information on the functioning of the markets for regulated instruments established under this part:

"(A) The status of, and trends in, the markets, including prices, trading volumes, transaction types, and trading channels and mechanisms.

"(B) Spikes, collapses, and volatility in prices of regulated instruments, and the causes therefor.

"(C) The relationship between the market for regulated allowances and allowance derivatives, and the spot and futures markets for energy commodities, including electricity.

"(D) Evidence of fraud or manipulation in any such market, the effects on any such mar-

ket of any such fraud or manipulation (or threat of fraud or manipulation) that the Commission, in conjunction with the Federal agency, has identified, and the effectiveness of corrective measures undertaken by the Commission, in conjunction with the Federal agency, to address the fraud, manipulation, or threat.

''(E) The economic effects of the markets, including to macro- and micro-economic effects of unexpected significant increases and decreases in the price of regulated instruments.

''(F) Any changes in the roles, activities, or strategies of various market participants.

''(G) Regional, industrial, and consumer responses to the markets, and energy investment responses to the markets.

''(H) Any other issue related to the markets that the Commission, in conjunction with the entities, deems appropriate.

''(2) ANNUAL REPORTS TO THE CONGRESS.—Not later than 1 month after the end of each calendar year, the Commission, in conjunction with the Federal agency, shall submit to the President, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Energy

and Natural Resources of the Senate, and make available to the public, a report on the matters described in paragraph (1) with respect to the year, including recommendations for any administrative or statutory measures the Commission, in conjunction with the Federal agency, considers necessary to address any threats to the transparency, fairness, or integrity of the markets in regulated instruments.

"SEC. 402. APPLICABILITY OF PART III PROVISIONS.

"(a) SECTIONS 301, 304, AND 306.—Sections 301, 304, and 306 shall not apply to this part.

"(b) SECTIONS 307, 309, AND 314.—Sections 307, 309, and 314 shall only apply to section 401(c) to the extent that the Commission is delegated authority to promulgate regulations for the establishment, operation, and oversight of markets for regulated allowance derivatives (as defined in section 401). If the Commission is not delegated authority to promulgate regulations for the establishment, operation, and oversight of markets for regulated allowance derivatives, sections 307, 309, and 314 shall not apply to section 401(f) in the case of regulated allowance derivatives.

"(c) SECTION 315.—In applying section 315(a) to this part, the words "person or entity" shall be substituted for the words "licensee or public utility". In applying sec-

tion 315(b) to this part, the words ''an entity'' shall be substituted for the words ''a licensee or public utility'' and the words ''such entity'' shall be substituted for the words ''such licensee or public utility.''

''(d) SECTION 316.—Section 316(a) shall not apply to section 401(f).''.

(b) CRIMINAL PROHIBITION AGAINST FRAUD AND FALSE OR MISLEADING STATEMENTS.—

(1) Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

''§ 1041. Fraud and false statements in connection with regulated allowances

''Whoever in connection with a transaction involving a regulated allowance (as defined in section 401(a) of the Federal Power Act, as added by section 341 of the American Clean Energy and Security Act of 2009), knowingly—

''(1) makes or uses a materially false or misleading statement, writing, representation, scheme, or device; or

''(2) falsifies, conceals, or covers up by any trick, scheme, or device any material fact,

shall be fined not more than $5,000,000 (or $25,000,000 in the case of an organization) or imprisoned not more than 20 years, or both.''.

(2) The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

''1041. Fraud and false statements in connection with regulated allowances.''.

Subtitle E—Additional Market Assurance

SEC. 351. REGULATION OF CERTAIN TRANSACTIONS IN DERIVATIVES INVOLVING ENERGY COMMODITIES.

(a) ENERGY COMMODITY DEFINED.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (14), by inserting '', an energy commodity,'' after ''excluded commodity'';

(2) by redesignating paragraphs (13) through (21) and paragraphs (22) through (34) as paragraphs (14) through (22) and paragraphs (24) through (36), respectively;

(3) by inserting after paragraph (12) the following:

''(13) ENERGY COMMODITY.—The term 'energy commodity' means—

''(A) coal;

''(B) crude oil, gasoline, diesel fuel, jet fuel, heating oil, and propane;

"(C) electricity (excluding financial transmission rights which are subject to regulation and oversight by the Federal Energy Regulatory Commission);

"(D) natural gas; and

"(E) any other substance (other than an excluded commodity, a metal, or an agricultural commodity) that is used as a source of energy, as the Commission, in its discretion, deems appropriate."; and

(4) by inserting after paragraph (22) (as so redesignated by paragraph (2) of this subsection) the following:

"(23) INCLUDED ENERGY TRANSACTION.—The term 'included energy transaction' means a contract, agreement, or transaction in an energy commodity for future delivery that provides for a delivery point of the energy commodity in the United States or a territory or possession of the United States, or that is offered or transacted on or through a computer terminal located in the United States.".

(b) EXTENSION OF REGULATORY AUTHORITY TO SWAPS INVOLVING ENERGY TRANSACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting

"or an energy commodity" after "agricultural commodity".

(c) ELIMINATION OF EXEMPTION FOR OVER-THE-COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended by inserting "(other than an energy commodity)" after "exempt commodity".

(d) EXTENSION OF REGULATORY AUTHORITY TO INCLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amended—

(1) in subsection (a), by inserting ", and which is not an included energy transaction" after "territories or possessions" the 2nd place it appears; and

(2) in subsection (b), by adding at the end the following: "The preceding sentence shall not apply with respect to included energy transactions.".

(e) LIMITATION OF GENERAL EXEMPTIVE AUTHORITY OF THE CFTC WITH RESPECT TO INCLUDED ENERGY TRANSACTIONS.—

(1) IN GENERAL.—Section 4(c) of such Act (7 U.S.C. 6(c)) is amended by adding at the end the following:

"(6) The Commission may not exempt any included energy transaction from the requirements of subsection

(a), unless the Commission provides 60 days advance notice to the Congress and the Position Limit Energy Advisory Group and solicits public comment about the exemption request and any proposed Commission action.''.

(2) NULLIFICATION OF NO-ACTION LETTER EXEMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE TO INCLUDED ENERGY TRANSACTIONS.—Beginning 180 days after the date of the enactment of this Act, any exemption provided by the Commodity Futures Trading Commission that has allowed included energy transactions (as defined in section 1a(13) of the Commodity Exchange Act) to be conducted without regard to the requirements of section 4(a) of such Act shall be null and void.

(f) REQUIREMENT TO ESTABLISH UNIFORM SPECULATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—

(1) IN GENERAL.—Section 4a(a) of such Act (7 U.S.C. 6a(a)) is amended—

(A) by inserting ''(1)'' after ''(a)'';

(B) by inserting after the 2nd sentence the following: ''With respect to energy transactions, the Commission shall fix limits on the aggregate number of positions which may be held by any person for each month across all markets subject to the jurisdiction of the Commission.'';

(C) in the 4th sentence by inserting ", consistent with the 3rd sentence," after "Commission"; and

(D) by adding after and below the end the following:

"(2)(A) Not later than 60 days after the date of the enactment of this paragraph, the Commission shall convene a Position Limit Energy Advisory Group consisting of representatives from—

"(i) 7 predominantly commercial short hedgers of the actual energy commodity for future delivery;

"(ii) 7 predominantly commercial long hedgers of the actual energy commodity for future delivery;

"(iii) 4 non-commercial participants in markets for energy commodities for future delivery; and

"(iv) each designated contract market or derivatives transaction execution facility upon which a contract in the energy commodity for future delivery is traded, and each electronic trading facility that has a significant price discovery contract in the energy commodity.

"(B) Not later than 60 days after the date on which the advisory group is convened under subparagraph (A), and annually thereafter, the advisory group shall submit

to the Commission advisory recommendations regarding the position limits to be established in paragraph (1).

"(C) The Commission shall have exclusive authority to grant exemptions for bona fide hedging transactions and positions from position limits imposed under this Act on energy transactions.".

(2) CONFORMING AMENDMENTS.—

(A) SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Section 2(h)(7) of such Act (7 U.S.C. 2(h)(7)) is amended—

(i) in subparagraph (A)—

(I) by inserting "of this paragraph and section 4a(a)" after "(B) through (D)"; and

(II) by inserting "of this paragraph" before the period; and

(ii) in subparagraph (C)(ii)(IV)—

(I) in the heading, by striking "LIMITATIONS OR"; and

(II) by striking "position limitations or".

(B) CONTRACTS TRADED ON OR THROUGH DESIGNATED CONTRACT MARKETS.—Section 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is amended—

(i) in the heading by striking ''LIMITATIONS OR''; and

(ii) by striking ''position limitations or''.

(C) CONTRACTS TRADED ON OR THROUGH DERIVATIVES TRANSACTION EXECUTION FACILITIES.—Section 5a(d)(4) of such Act (7 U.S.C. 7a(d)(4)) is amended—

(i) in the heading by striking ''LIMITATIONS OR''; and

(ii) by striking ''position limits or''.

(g) ELIMINATION OF THE SWAPS LOOPHOLE.—Section 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—

(1) by inserting ''(1)'' after ''(c)''; and

(2) by adding after and below the end the following:

''(2) For the purposes of contracts of sale for future delivery and options on such contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

''(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

"(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

"(iii) arises from the potential change in the value of—

"(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

"(II) liabilities that a person owns or anticipates incurring; or

"(III) services that a person provides, purchases, or anticipates providing or purchasing; or

"(B) reduces risks attendant to a position resulting from a transaction that—

"(i) was executed pursuant to subsection (d), (g), (h)(1), or (h)(2) of section 2, or an exemption issued by the Commission by rule, regulation or order; and

"(ii) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to paragraph (2)(A) of this subsection.".

(h) DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is amended by adding at the end the following:

"(e) DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA.—

"(1) INDEX TRADERS AND SWAP DEALERS REPORTING.—The Commission shall issue a proposed rule defining and classifying index traders and swap dealers (as those terms are defined by the Commission) for purposes of data reporting requirements and setting routine detailed reporting requirements for any positions of such entities in contracts traded on designated contract markets, over-the-counter markets, derivatives transaction execution facilities, foreign boards of trade subject to section 4(f), and electronic trading facilities with respect to significant price discovery contracts not later than 120 days after the date of the enactment of this subsection, and issue a final rule within 180 days after such date of enactment.

"(2) DISAGGREGATION OF INDEX FUNDS AND OTHER DATA IN MARKETS.—Subject to section 8 and beginning within 60 days of the issuance of the final rule required by paragraph (1), the Commission shall disaggregate and make public weekly—

1 "(A) the number of positions and total no-
2 tional value of index funds and other passive,
3 long-only and short-only positions (as defined
4 by the Commission) in all markets to the extent
5 such information is available; and
6 "(B) data on speculative positions relative
7 to bona fide physical hedgers in those markets
8 to the extent such information is available.
9 "(3) DISCLOSURE OF IDENTITY OF HOLDERS
10 OF POSITIONS IN INDEXES IN EXCESS OF POSITION
11 LIMITS.—The Commission shall include in its weekly
12 Commitment of Trader reports the identity of each
13 person who holds a position in an index in excess of
14 a limit imposed under section 4i.".
15 (i) AUTHORITY TO SET LIMITS TO PREVENT EXCES-
16 SIVE SPECULATION IN INDEXES.—
17 (1) IN GENERAL.—Section 4a of such Act (7
18 U.S.C. 6a) is amended by adding at the end the fol-
19 lowing:
20 "(f) The provisions of this section shall apply to the
21 amounts of trading which may be done or positions which
22 may be held by any person under contracts of sale of an
23 index for future delivery on or subject to the rules of any
24 contract market, derivatives transaction execution facility,
25 or over-the-counter market, or on an electronic trading fa-

cility with respect to a significant price discovery contract, in the same manner in which this section applies to contracts of sale of a commodity for future delivery.''.

(2) REGULATIONS.—The Commodity Futures Trading Commission shall issue regulations under section 4a(f) of the Commodity Exchange Act within 180 days after the date of the enactment of this Act.

SEC. 352. NO EFFECT ON AUTHORITY OF THE FEDERAL ENERGY REGULATORY COMMISSION.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:.

''(j) This Act shall not be interpreted to affect the jurisdiction of the Federal Energy Regulatory Commission with respect to the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or other law to obtain information, carry out enforcement actions, or otherwise carry out the responsibilities of the Federal Energy Regulatory Commission.''.

SEC. 353. INSPECTOR GENERAL OF THE COMMODITY FUTURES TRADING COMMISSION.

(a) ELEVATION OF OFFICE.—

(1) INCLUSION OF CFTC IN DEFINITION OF ESTABLISHMENT.—

(A) Section 12(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;'' and inserting ''the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; or the Chairman of the Commodity Futures Trading Commission;''.

(B) Section 12(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''or the Commissions established under section 15301 of title 40, United States Code,'' and inserting ''the Commissions established under section 15301 of title 40, United States Code, or the Commodity Futures Trading Commission,''.

(2) EXCLUSION OF CFTC FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''the Commodity Futures Trading Commission,''.

(b) PROVISIONS RELATING TO PAY AND PERSONNEL AUTHORITY.—

(1) PROVISION RELATING TO THE POSITION OF INSPECTOR GENERAL OF THE CFTC.—In the case of the Inspector General of the Commodities Futures Trading Commission, subsections (b) and (c) of section 4 of the Inspector General Reform Act of 2008 (Public Law 110-409) shall apply in the same manner as if the Commission was a designated Federal entity under section 8G. The Inspector General of the Commodities Futures Trading Commission shall not be subject to section 3(e) of such Act.

(2) PROVISION RELATING TO OTHER PERSONNEL.—Notwithstanding paragraphs (7) and (8) of section 6(a) of the Inspector General Act of 1978 (5 U.S.C. App.), the Inspector General of the Commodities Futures Trading Commission may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the Commodities Futures Trading Commission.

(c) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of the enactment of this Act.

(2) TRANSITION RULE.—An individual serving as Inspector General of the Commodity Futures Trading Commission on the effective date of this section pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) may continue so serving until the President makes an appointment under section 3(a) of such Act consistent with the amendments made by this section; and

(B) shall, while serving under subparagraph (A), remain subject to the provisions of section 8G of such Act which apply with respect to the Commodity Futures Trading Commission.

SEC. 354. SETTLEMENT AND CLEARING THROUGH REGISTERED DERIVATIVES CLEARING ORGANIZATIONS.

(a) IN GENERAL.—

(1) APPLICATION TO EXCLUDED DERIVATIVE TRANSACTIONS.—

(A) Section 2(d)(1) of the Commodity Exchange Act (7 U.S.C. 2(d)(1)) is amended—

(i) by striking ''and'' at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting ''; and''; and

(iii) by adding at the end the following:

''(C) except as provided in section 4(f), the agreement, contract, or transaction is settled and cleared through a derivatives clearing organization registered with the Commission.''.

(B) Section 2(d)(2) of such Act (7 U.S.C. 2(d)(2)) is amended—

(i) by striking ''and'' at the end of subparagraph (B);

(ii) by striking the period at the end of subparagraph (C) and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) except as provided in section 4(f), the agreement, contract, or transaction is settled

and cleared through a derivatives clearing organization registered with the Commission.''.

(2) APPLICATION TO CERTAIN SWAP TRANSACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g)) is amended—

(A) by striking ''and'' at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(C) by adding at the end the following:

''(4) except as provided in section 4(f), settled and cleared through a derivatives clearing organization registered with the Commission.''.

(3) APPLICATION TO CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

(A) Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended—

(i) by striking ''and'' at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting ''; and''; and

(iii) by adding at the end the following:

"(C) except as provided in section 4(f), is settled and cleared through a derivatives clearing organization registered with the Commission.".

(B) Section 2(h)(3) of such Act (7 U.S.C. 2(h)(3)) is amended—

(i) by striking "and" at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(iii) by adding at the end the following:

"(C) except as provided in section 4(f), settled and cleared through a derivatives clearing organization registered with the Commission.".

(4) GENERAL EXEMPTIVE AUTHORITY.—Section 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is amended by inserting "the agreement, contract, or transaction, except as provided in section 4(h), will be settled and cleared through a derivatives clearing organization registered with the Commission and" before "the Commission determines".

(5) CONFORMING AMENDMENT RELATING TO SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Sec-

tion 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is amended by striking the designation and heading for the subparagraph and all that follows through ''As part of'' and inserting the following:

''(D) REVIEW OF IMPLEMENTATION.—As part of''.

(b) ALTERNATIVES TO CLEARING THROUGH DESIGNATED CLEARING ORGANIZATIONS.—Section 4 of such Act (7 U.S.C. 6), as amended by section 351(h) of this Act, is amended by adding at the end the following:

''(f) ALTERNATIVES TO CLEARING THROUGH DESIGNATED CLEARING ORGANIZATIONS.—

''(1) SETTLEMENT AND CLEARING THROUGH CERTAIN OTHER REGULATED ENTITIES.—An agreement, contract, or transaction, or class thereof, relating to an excluded commodity, that would otherwise be required to be settled and cleared by section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or subsection (c)(1) of this section may be settled and cleared through an entity listed in subsections (a) or (b) of section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

''(2) WAIVER OF CLEARING REQUIREMENT.—

"(A) The Commission, in its discretion, may exempt an agreement, contract, or transaction, or class thereof, that would otherwise be required by section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or subsection (c)(1) of this section to be settled and cleared through a derivatives clearing organization registered with the Commission from such requirement.

"(B) In granting exemptions pursuant to subparagraph (A), the Commission shall consult with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System regarding exemptions that relate to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator.

"(C) Before granting an exemption pursuant to subparagraph (A), the Commission shall find that the agreement, contract, or transaction, or class thereof—

"(i) is highly customized as to its material terms and conditions;

"(ii) is transacted infrequently;

"(iii) does not serve a significant price-discovery function in the marketplace; and

"(iv) is being entered into by parties who can demonstrate the financial integrity of the agreement, contract, or transaction and their own financial integrity, as such terms and standards are determined by the Commission. The standards may include, with respect to any federally regulated financial entity for which net capital requirements are imposed, a net capital requirement associated with any agreement, contract, or transaction subject to an exemption from the clearing requirement that is higher than the net capital requirement that would be associated with such a transaction were it cleared

"(D) Any agreement, contract, or transaction, or class thereof, which is exempted pursuant to subparagraph (A) shall be reported to the Commission in a manner designated by the Commission, or to such other entity the Commission deems appropriate.

"(E) The Commission, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System shall enter into a memorandum of understanding by which the information reported to the Commission pursuant to subparagraph (D) with regard to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator may be provided to the other agencies.

"(g) SPOT AND FORWARD EXCLUSION.—The settlement and clearing requirements of section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(c)(1) shall not apply to an agreement, contract, or transaction of any cash commodity for immediate or deferred shipment or delivery, as defined by the Commission.".

(c) ADDITIONAL REQUIREMENTS APPLICABLE TO APPLICANTS FOR REGISTRATION AS A DERIVATIVE CLEARING ORGANIZATION.—Section 5b(c)(2) of such Act (7 U.S.C. 7a-1(c)(2)) is amended by adding at the end the following:

"(O) DISCLOSURE OF GENERAL INFORMATION.—The applicant shall disclose publicly and to the Commission information concerning—

"(i) the terms and conditions of contracts, agreements, and transactions cleared and settled by the applicant;

"(ii) the conventions, mechanisms, and practices applicable to the contracts, agreements, and transactions;

"(iii) the margin-setting methodology and the size and composition of the financial resource package of the applicant; and

"(iv) other information relevant to participation in the settlement and clearing activities of the applicant.

"(P) DAILY PUBLICATION OF TRADING INFORMATION.—The applicant shall make public daily information on settlement prices, volume, and open interest for contracts settled or cleared pursuant to the requirements of section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C) or 4(c)(1) of this Act by the applicant if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

"(Q) FITNESS STANDARDS.—The applicant shall establish and enforce appropriate fitness

standards for directors, members of any disciplinary committee, and members of the applicant, and any other persons with direct access to the settlement or clearing activities of the applicant, including any parties affiliated with any of the persons described in this subparagraph.''.

(d) AMENDMENTS.—

(1) Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4422) is amended by adding at the end the following:

''(c) CLEARING REQUIREMENT.—A multilateral clearing organization described in subsections (a) or (b) of this section shall comply with requirements similar to the requirements of sections 5b and 5c of the Commodity Exchange Act.''.

(2) Section 407 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27e) is amended by inserting ''and the settlement and clearing requirements of sections 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such Act'' after ''the clearing of covered swap agreements''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 150 days after the date of the enactment of this Act.

(f) TRANSITION RULE.—Any agreement, contract, or transaction entered into before the date of the enactment of this Act or within 150 days after such date of enactment, in reliance on subsection (d), (g), (h)(1), or (h)(3) of section 2 of the Commodity Exchange Act or any other exemption issued by the Commission Futures Trading Commission by rule, regulation, or order shall, within 90 days after such date of enactment, unless settled and cleared through an entity registered with the Commission as a derivatives clearing organization or another clearing entity pursuant to section 4(f) of such Act, be reported to the Commission in a manner designated by the Commission, or to such other entity as the Commission deems appropriate.

SEC. 355. LIMITATION ON ELIGIBILITY TO PURCHASE A CREDIT DEFAULT SWAP.

(a) IN GENERAL.—Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by adding at the end the following:

"(h) LIMITATION ON ELIGIBILITY TO PURCHASE A CREDIT DEFAULT SWAP.—It shall be unlawful for any

1 person to enter into a credit default swap unless the per-
2 son—
3 ''(1) owns a credit instrument which is insured
4 by the credit default swap;
5 ''(2) would experience financial loss if an event
6 that is the subject of the credit default swap occurs
7 with respect to the credit instrument; and
8 ''(3) meets such minimum capital adequacy
9 standards as may be established by the Commission,
10 in consultation with the Board of Governors of the
11 Federal Reserve System, or such more stringent
12 minimum capital adequacy standards as may be es-
13 tablished by or under the law of any State in which
14 the swap is originated or entered into, or in which
15 possession of the contract involved takes place.''.
16 (b) ELIMINATION OF PREEMPTION OF STATE
17 BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT
18 SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C.
19 16(e)(2)(B)) is amended by inserting ''(other than a credit
20 default swap in which the purchaser of the swap would
21 not experience financial loss if an event that is the subject
22 of the swap occurred)'' before ''that is excluded''.
23 (c) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-
24 tion 1a of such Act (7 U.S.C. 1a), as amended by section

351(a) of this Act, is amended by adding at the end the following:

"(37) CREDIT DEFAULT SWAP.—The term 'credit default swap' means a contract which insures a party to the contract against the risk that an entity may experience a loss of value as a result of an event specified in the contract, such as a default or credit downgrade. A credit default swap that is traded on or cleared by a registered entity shall be excluded from the definition of a security as defined in this Act and in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, except it shall be deemed a security solely for purpose of enforcing prohibitions against insider trading in sections 10 and 16 of the Securities Exchange Act of 1934.".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective for credit default swaps (as defined in section 1a(37) of the Commodity Exchange Act) entered into after 60 days after the date of the enactment of this section.

SEC. 356. TRANSACTION FEES.

(a) IN GENERAL.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by redesignating subsections (e), (f), and (g) as subsections (f), (g), and

1 (h), respectively, and inserting after subsection (d) the fol-
2 lowing:

3 "(e) CLEARING FEES.—

4 "(1) IN GENERAL.—The Commission shall, in
5 accordance with this subsection, charge and collect
6 from each registered clearing organization, and each
7 such organization shall pay to the Commission,
8 transaction fees at a rate calculated to recover the
9 costs to the Federal Government of the supervision
10 and regulation of futures markets, except those di-
11 rectly related to enforcement.

12 "(2) FEES ASSESSED PER SIDE OF CLEARED
13 CONTRACTS.—

14 "(A) IN GENERAL.—The Commission shall
15 determine the fee rate referred to in paragraph
16 (1), and shall apply the fee rate per side of any
17 transaction cleared.

18 "(B) AUTHORITY TO DELEGATE.— The
19 Commission may determine the procedures by
20 which the fee rate is to be applied on the trans-
21 actions subject to the fee, or delegate the au-
22 thority to make the determination to any appro-
23 priate derivatives clearing organization.

24 "(3) EXEMPTIONS.—The Commission may not
25 impose a fee under paragraph (1) on—

"(A) a class of contracts or transactions if the Commission finds that it is in the public interest to exempt the class from the fee; or

"(B) a contract or transaction cleared by a registered derivatives clearing organization that is—

"(i) subject to fees under section 31 of the Securities Exchange Act of 1934; or

"(ii) a security as defined in the Securities Act of 1933 or the Securities Exchange Act of 1934.

"(4) DATES FOR PAYMENT OF FEES.—The fees imposed under paragraph (1) shall be paid on or before—

"(A) March 15 of each year, with respect to transactions occurring on or after the preceding September 1 and on or before the preceding December 31; and

"(B) September 15 of each year, with respect to transactions occurring on or after the preceding January 1 and on or before the preceding August 31.

"(5) ANNUAL ADJUSTMENT OF FEE RATES.—

"(A) IN GENERAL.—Not later than April 30 of each fiscal year , the Commission shall,

by order, adjust each fee rate determined under paragraph (2) for the fiscal year to a uniform adjusted rate that, when applied to the estimated aggregate number of cleared sides of transactions for the fiscal year, is reasonably likely to produce aggregate fee receipts under this subsection for the fiscal year equal to the target offsetting receipt amount for the fiscal year.

"(B) DEFINITIONS.—In subparagraph (A):

"(i) ESTIMATED AGGREGATE NUMBER OF CLEARED SIDES OF TRANSACTIONS.—The term 'estimated aggregate number of cleared sides of transactions' means, with respect to a fiscal year, the aggregate number of cleared sides of transactions to be cleared by registered derivatives clearing organizations during the fiscal year, as estimated by the Commission, after consultation with the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(ii) TARGET OFFSETTING RECEIPT AMOUNT.—The term 'target offsetting receipt amount' means, with respect to a fiscal year, the total level of Commission budget authority for all non-enforcement activities of the Commission, as contained in the regular appropriations Acts for the fiscal year.

"(C) NO JUDICIAL REVIEW.—An adjusted fee rate prescribed under subparagraph (A) shall not be subject to judicial review.

"(6) PUBLICATION.—Not later than April 30 of each fiscal year, the Commission shall cause to be published in the Federal Register notices of the fee rates applicable under this subsection for the succeeding fiscal year, and any estimate or projection on which the fee rates are based.

"(7) ESTABLISHMENT OF FUTURES AND OPTIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF FEES.—There is established in the Treasury of the United States an account which shall be known as the 'Futures and Options Transaction Fee Account'. All fees collected under this subsection for a fiscal year shall be deposited in the account. Amounts in

the account are authorized to be appropriated to fund the expenditures of the Commission.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to fiscal years beginning 30 or more days after the date of the enactment of this Act.

(c) TRANSITION RULE.—If this section becomes law after March 31 and before September 1 of a fiscal year, then paragraphs (5)(A) and (6) of section 12(e) of the Commodity Exchange Act shall be applied, in the case of the 1st fiscal year beginning after the date of the enactment of this Act, by substituting ''August 31'' for ''April 30''.

SEC. 357. NO EFFECT ON ANTITRUST LAW OR AUTHORITY OF THE FEDERAL TRADE COMMISSION.

(a) Nothing in this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subsection, the term ''antitrust laws'' has the meaning given it in subsection (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such term applies to unfair methods of competition.

(b) Nothing in this subtitle shall be construed to affect or diminish the jurisdiction or authority of the Federal Trade Commission with respect to its authorities

under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or the Energy Independence and Security Act of 2007 (Public Law 110–140) to obtain information, to carry out enforcement activities, or otherwise to carry out the responsibilities of the Federal Trade Commission.

SEC. 358. REGULATION OF CARBON DERIVATIVES MARKETS.

(a) DEFAULT RULE.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by section 352 of this Act, is amended by adding at the end the following:

''(k) The Commission shall have jurisdiction over the establishment, operations, and oversight of markets for regulated allowance derivatives (as defined in section 401 of the Federal Power Act (16 U.S.C. 791a and following)), and shall provide for the establishment, operation, and oversight of the markets in accordance with the same regulations that apply under this Act to included energy transactions.''.

(b) PRESIDENTIAL DETERMINATIONS.—To the extent that the President delegates the authority to promulgate regulations for the establishment, operation, and oversight of all markets for regulated allowance derivatives to a Federal agency other than the Commodity Futures Trading Commission pursuant to section 401 of the Federal Power Act, such determination shall supersede sub-

section (a). To the extent that the President determines that regulations promulgated pursuant to section 401(c)(2) of the Federal Power Act would provide for more stringent and effective market oversight, such regulations shall supersede subsection (a). Nothing in this section shall be construed to affect the operation of the default rules established in section 401(c)(4) of the Federal Power Act.

SEC. 359. CEASE-AND-DESIST AUTHORITY.

(a) NATURAL GAS ACT.—Section 20 of the Natural Gas Act (15 U.S.C. 717s) is amended by adding the following at the end:

"(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY ORDERS; AUTHORITY OF THE COMMISSION.—

"(1) IN GENERAL.—If the Commission finds, after notice and opportunity for hearing, that any entity may be violating, may have violated, or may be about to violate any provision of this Act, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under the authority of this Act, the Commission may publish its findings and issue an order requiring such entity, and any other entity that is, was, or would be a cause of the violation, due to an act or omission the entity knew or should have known would contribute to such vio-

lation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring an entity to cease and desist from committing or causing a violation, require such entity to comply, to provide an accounting and disgorgement, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify.

"(2) TIMING OF ENTRY.—An order issued under this subsection shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.

"(f) HEARING.—The notice instituting proceedings pursuant to subsection (e) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

"(g) TEMPORARY ORDER.—Whenever the Commission determines that—

"(1) a respondent may take actions to dissipate or convert assets prior to the completion of the proceedings referred to in subsection (e), and such assets would be necessary to comply with or otherwise satisfy a final enforcement order of the Commission pursuant to alleged violations or threatened violations specified in the notice instituting proceedings; or

"(2) a respondent is engaged in actual or threatened violations of this Act or a Commission rule, regulation, restriction or order referred to in subsection (e),

the Commission may issue a temporary order requiring the respondent to take such action to prevent dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, frustration of the Commission's ability to conduct the proceedings, or frustration of the Commission's ability to redress said violation at the conclusion of the proceedings, as the Commission deems appropriate pending completion of such proceedings.

"(h) REVIEW OF TEMPORARY ORDERS.—

"(1) COMMISSION REVIEW.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (g), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

"(2) JUDICIAL REVIEW.—Within—

"(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing; or

"(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1),

with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States circuit court having jurisdiction over the circuit in which the respondent resides or has its principal place of

business, or to the United States Court of Appeals for the District of Columbia Circuit, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

"(3) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

"(4) EXCLUSIVE REVIEW.—Sections 19(d) and 24 shall not apply to a temporary order entered pursuant to this section.

"(i) IMPLEMENTATION.—The Commission is authorized to adopt rules, regulations, and orders as it deems appropriate to implement this section.".

(c) NATURAL GAS POLICY ACT OF 1978.—Section 504 of the Natural Gas Policy Act of 1978 (15 U.S.C. 3414) is amended by adding the following at the end:

1 "(d) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
2 ORDERS; AUTHORITY OF THE COMMISSION.—
3 "(1) IN GENERAL.—If the Commission finds,
4 after notice and opportunity for hearing, that any
5 entity may be violating, may have violated, or may
6 be about to violate any provision of this Act, or any
7 rule, regulation, restriction, condition, or order made
8 or imposed by the Commission under the authority
9 of this Act, the Commission may publish its findings
10 and issue an order requiring such entity, and any
11 other entity that is, was, or would be a cause of the
12 violation, due to an act or omission the entity knew
13 or should have known would contribute to such vio-
14 lation, to cease and desist from committing or caus-
15 ing such violation and any future violation of the
16 same provision, rule, or regulation. Such order may,
17 in addition to requiring an entity to cease and desist
18 from committing or causing a violation, require such
19 entity to comply, to provide an accounting and
20 disgorgement, or to take steps to effect compliance,
21 with such provision, rule, or regulation, upon such
22 terms and conditions and within such time as the
23 Commission may specify in such order. Any such
24 order may, as the Commission deems appropriate,
25 require future compliance or steps to effect future

compliance, either permanently or for such period of time as the Commission may specify.

"(2) TIMING OF ENTRY.—An order issued under this subsection shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.

"(3) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

"(4) TEMPORARY ORDER.—Whenever the Commission determines that—

"(A) a respondent may take actions to dissipate or convert assets prior to the completion of the proceedings referred to in paragraph (1) and such assets would be necessary to comply with or otherwise satisfy a final enforcement order of the Commission pursuant to alleged violations or threatened violations specified in the notice instituting proceedings; or

"(B) a respondent is engaged in actual or threatened violations of this Act or a Commission rule, regulation, restriction or order referred to in paragraph (1),

the Commission may issue a temporary order requiring the respondent to take such action to prevent dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, frustration of the Commission's ability to conduct the proceedings, or frustration of the Commission's ability to redress said violation at the conclusion of the proceedings, as the Commission deems appropriate pending completion of such proceedings.

"(5) REVIEW OF TEMPORARY ORDERS.—

"(A) COMMISSION REVIEW.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (4), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing

on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

"(B) JUDICIAL REVIEW.—Within—

"(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing; or

"(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States circuit court having jurisdiction over the circuit in which the respondent resides or has its principal place of business, or to the United States Court of Appeals for the District of Columbia Circuit, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior

Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

"(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

"(6) IMPLEMENTATION.—The Commission is authorized to adopt rules, regulations, and orders as it deems appropriate to implement this subsection.".

TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

Subtitle A—Ensuring Real Reductions in Industrial Emissions

SEC. 401. ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS.

Title VII of the Clean Air Act is amended by inserting after part E the following new part:

"PART F—ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS

"SEC. 761. PURPOSES.

"(a) PURPOSE OF PART.—The purposes of this part are—

"(1) to promote a strong global effort to significantly reduce greenhouse gas emissions, and, through this global effort, stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous anthropogenic interference with the climate system; and

"(2) to prevent an increase in greenhouse gas emissions in countries other than the United States as a result of direct and indirect compliance costs incurred under this title.

"(b) PURPOSES OF SUBPART 1.—The purposes of subpart 1 are additionally—

"(1) to rebate the owners and operators of entities in domestic eligible industrial sectors for their greenhouse gas emission costs incurred under this title, but not for costs associated with other related or unrelated market dynamics;

"(2) to design such rebates in a way that will prevent carbon leakage while also rewarding innovation and facility-level investments in energy efficiency performance improvements; and

"(3) to eliminate or reduce distribution of emission allowances under this part when such distribution is no longer necessary to prevent carbon leakage from eligible industrial sectors.

"SEC. 762. INTERNATIONAL NEGOTIATIONS.

"(a) FINDING.—Congress finds that the purposes of this part, as set forth in section 761, can be most effectively addressed and achieved through agreements negotiated between the United States and foreign countries.

"(b) STATEMENT OF POLICY.—It is the policy of the United States to work proactively under the United Nations Framework Convention on Climate Change, and in other appropriate forums, to establish binding agreements, including sectoral agreements, committing all major greenhouse gas-emitting nations to contribute equitably to the reduction of global greenhouse gas emissions.

"(c) NOTIFICATION OF FOREIGN COUNTRIES.—Not later than January 1, 2020, the President shall notify foreign countries that an International Reserve Allowance Program, as described in subpart 2, may apply to primary products produced in a foreign country by a sector with respect to which the President has made a determination under section 767(b) that 70 percent or less of the global output for the sector is produced or manufactured in coun-

tries that have met one or more of the criteria in that subsection.

"SEC. 763. DEFINITIONS.

"In this part:

"(1) CARBON LEAKAGE.—The term 'carbon leakage' means any substantial increase (as determined by the Administrator) in greenhouse gas emissions by industrial entities located in other countries if such increase is caused by an incremental cost of production increase in the United States resulting from the implementation of this title.

"(2) ELIGIBLE INDUSTRIAL SECTOR.—The term 'eligible industrial sector' means an industrial sector determined by the Administrator under section 764(b) to be eligible to receive emission allowance rebates under subpart 1.

"(3) INDUSTRIAL SECTOR.—The term 'industrial sector' means any sector that is in the manufacturing sector (as defined in NAICS codes 31, 32, and 33).

"(4) NAICS.—The term 'NAICS' means the North American Industrial Classification System of 2002.

"(5) OUTPUT.—The term 'output' means the total tonnage or other standard unit of production (as determined by the Administrator) produced by an entity in an industrial sector. The output of the cement sector is hydraulic cement, and not clinker.

"(6) PRIMARY PRODUCT.—The term 'primary product' means a product manufactured by an eligible industrial sector that is—

"(A) iron, steel, steel mill products (including pipe and tube), aluminum, cement, glass (including flat, container, and specialty glass and fiberglass), pulp, paper, chemicals, or industrial ceramics; or

"(B) any other manufactured product that is sold in bulk for purposes of further manufacture or inclusion in a finished product.

"Subpart 1—Emission Allowance Rebate Program

"SEC. 764. ELIGIBLE INDUSTRIAL SECTORS.

"(a) LIST.—

"(1) INITIAL LIST.—Not later than June 30, 2011, the Administrator shall publish in the Federal Register a list of eligible industrial sectors pursuant to subsection (b). Such list shall include the amount of the emission allowance rebate per unit of production that shall be provided to entities in each eligible

industrial sector in the following two calendar years pursuant to section 765.

"(2) SUBSEQUENT LISTS.—Not later than February 1, 2013, and every four years thereafter, the Administrator shall publish in the Federal Register an updated version of the list published under paragraph (1).

"(b) ELIGIBLE INDUSTRIAL SECTORS.—

"(1) IN GENERAL.—Not later than June 30, 2011, the Administrator shall promulgate a rule designating, based on the criteria under paragraph (2), the industrial sectors eligible for emission allowance rebates under this subpart.

"(2) PRESUMPTIVELY ELIGIBLE INDUSTRIAL SECTORS.—

"(A) ELIGIBILITY CRITERIA.—An owner or operator of an entity shall be eligible to receive emission allowance rebates under this subpart if such entity is in an industrial sector that is included in a six-digit classification of the NAICS that meets the criteria in both clauses (i) and (ii), or the criteria in clause (iii).

"(i) ENERGY OR GREENHOUSE GAS INTENSITY.—As determined by the Administrator, the industrial sector had—

"(I) an energy intensity of at least 5 percent, calculated by dividing the cost of purchased electricity and fuel costs of the sector by the value of the shipments of the sector, based on data described in subparagraph (E); or

"(II) a greenhouse gas intensity of at least 5 percent, calculated by dividing—

"(aa) the number 20 multiplied by the number of tons of carbon dioxide equivalent greenhouse gas emissions (including direct emissions from fuel combustion, process emissions, and indirect emissions from the generation of electricity used to produce the output of the sector) of the sector based on data described in subparagraph (E); by

"(bb) the value of the shipments of the sector, based on data described in subparagraph (E).

"(ii) TRADE INTENSITY.—As determined by the Administrator, the industrial sector had a trade intensity of at least 15 percent, calculated by dividing the value of the total imports and exports of such sector by the value of the shipments plus the value of imports of such sector, based on data described in subparagraph (E).

"(iii) VERY HIGH ENERGY OR GREENHOUSE GAS INTENSITY.—As determined by the Administrator, the industrial sector had an energy or greenhouse gas intensity, as calculated under clause (i)(I) or (II), of at least 20 percent.

"(B) IRON AND STEEL SECTOR.—For purposes of this subpart, in carrying out this section and section 765, the Administrator shall consider as in different industrial sectors—

"(i) entities using integrated iron and steelmaking technologies (including coke ovens, blast furnaces, and other iron-making technologies); and

"(ii) entities using electric arc furnace technologies.

"(C) METAL AND PHOSPHATE PRODUCTION CLASSIFIED UNDER MORE THAN ONE NAICS CODE.—For purposes of this subpart, in carrying out this section and section 765, the Administrator shall—

"(i) aggregate data for the beneficiation or other processing of iron and copper ores and phosphate with subsequent steps in the process of metal and phosphate manufacturing regardless of the NAICS code under which such activity is classified; and

"(ii) aggregate data for the manufacturing of steel with the manufacturing of steel pipe and tube made from purchased steel in a nonintegrated process.

"(D) EXCLUSION.—The petroleum refining sector shall not be an eligible industrial sector.

"(E) DATA SOURCES.—

"(i) ELECTRICITY AND FUEL COSTS, VALUE OF SHIPMENTS.—The Administrator shall determine electricity and fuel costs and the value of shipments under this subsection from data from the United States Census of Mineral Industries and

the United States Census Annual Survey of Manufacturers. The Administrator shall take the average of data from as many of the years of 2004, 2005, and 2006 for which such data are available. If such data are unavailable, the Administrator shall make a determination based upon 2002 or 2006 data from the most detailed industrial classification level of Energy Information Agency's Manufacturing Energy Consumption Survey (using 2006 data if it is available) and the 2002 or 2007 Economic Census of the United States (using 2007 data if it is available). If data from the Manufacturing Energy Consumption Survey are unavailable for any sector at the six-digit classification level in the NAICS, then the Administrator may extrapolate the information necessary to determine the eligibility of a sector under this paragraph from available Manufacturing Energy Consumption Survey data pertaining to a broader industrial category classified in the NAICS. Fuel cost data shall not include

the cost of fuel used as feedstock by an industrial sector.

"(ii) IMPORTS AND EXPORTS.—The Administrator shall base the value of imports and exports under this subsection on United States International Trade Commission data. The Administrator shall take the average of data from as many of the years of 2004, 2005, and 2006 for which such data are available.

"(iii) PERCENTAGES.—The Administrator shall round the energy intensity, greenhouse gas intensity, and trade intensity percentages under subparagraph (A) to the nearest whole number.

"(iv) GREENHOUSE GAS EMISSION CALCULATIONS.—When calculating the tons of carbon dioxide equivalent greenhouse gas emissions for each sector under subparagraph (A)(i)(II)(aa), the Administrator—

"(I) shall use the best available data from as many of the years 2004, 2005, and 2006 for which such data is available; and

"(II) may, to the extent necessary with respect to a sector, use economic and engineering models and the best available information on technology performance levels for such sector.

"(3) ADMINISTRATIVE DETERMINATION OF ADDITIONAL ELIGIBLE INDUSTRIAL SECTORS.—

"(A) UPDATED TRADE INTENSITY DATA.—The Administrator shall designate as eligible to receive emission allowance rebates under this subpart an industrial sector that—

"(i) met the energy or greenhouse gas intensity criteria in paragraph (2)(A)(i) as of the date of promulgation of the rule under paragraph (1); and

"(ii) meets the trade intensity criteria in paragraph (2)(A)(ii), using data from any year after 2006.

"(B) INDIVIDUAL SHOWING PETITION.—

"(i) PETITION.—In addition to designation under paragraph (2) or subparagraph (A) of this paragraph, the owner or operator of an entity in an industrial sector may petition the Administrator to des-

ignate as eligible industrial sectors under this subpart an entity or a group of entities that—

"(I) represent a subsector of a six-digit section of the NAICS code; and

"(II) meet the eligibility criteria in both clauses (i) and (ii) of paragraph (2)(A), or the eligibility criteria in clause (iii) of paragraph (2)(A).

"(ii) DATA.—In making a determination under this subparagraph, the Administrator shall consider data submitted by the petitioner that is specific to the entity, data solicited by the Administrator from other entities in the subsector, if such other entities exist, and data specified in paragraph (2)(E).

"(iii) BASIS OF SUBSECTOR DETERMINATION.—The Administrator shall determine an entity or group of entities to be a subsector of a six-digit section of the NAICS code based only upon the products manufactured and not the industrial process by which the products are manufac-

tured, except that the Administrator may determine an entity or group of entities that manufacture a product from a [virgin material] to be a separate subsector from another entity or group of entities that manufacture the same product from recycled material.

"(iv) USE OF MOST RECENT DATA.—In determining whether to designate a sector or subsector as an eligible industrial sector under this subparagraph, the Administrator shall use the most recent data available from the sources described in paragraph (2)(E), rather than the data from the years specified in paragraph (2)(E), to determine the trade intensity of such sector or subsector, but only for determining such trade intensity.

"(v) FINAL ACTION.—The Administrator shall take final action on such petition no later than 6 months after the petition is received by the Administrator.

"SEC. 765. DISTRIBUTION OF EMISSION ALLOWANCE REBATES.

"(a) DISTRIBUTION SCHEDULE.—

"(1) IN GENERAL.—For each vintage year, the Administrator shall distribute pursuant to this section emission allowances made available under section 782(e), no later than October 31 of the preceding calendar year. The Administrator shall make such annual distributions to the owners and operators of each entity in an eligible industrial sector in the amount of emission allowances calculated under subsection (b), except that—

"(A) for vintage years 2012 and 2013, the distribution for a covered entity shall be the entity's indirect carbon factor as calculated under subsection (b)(3); and

"(B) for vintage year 2026 and thereafter, the distribution shall be the amount calculated under subsection (b) multiplied by, except as modified by the President pursuant to section 767(c)(3)(A) for a sector—

"(i) 90 percent for vintage year 2026;

"(ii) 80 percent for vintage year 2027;

"(iii) 70 percent for vintage year 2028;

"(iv) 60 percent for vintage year 2029;

"(v) 50 percent for vintage year 2030;

"(vi) 40 percent for vintage year 2031;

"(vii) 30 percent for vintage year 2032;

"(viii) 20 percent for vintage year 2033;

"(ix) 10 percent for vintage year 2034; and

"(x) 0 percent for vintage year 2035 and thereafter.

"(2) RESUMPTION OF REDUCTION.—If the President has modified the percentage stated in paragraph (1)(B) under section 767(c)(3)(A), and the President subsequently makes a determination under section 767(b) for an eligible industrial sector that more than 70 percent of global output for that sector is produced or manufactured in countries that have met at least one of the criteria in that subsection, then the 10-year reduction schedule set forth in paragraph (1)(B) of this subsection shall begin in the next vintage year, with the percentage reduction based on the amount of the distribution of emission allowances under this section in the previous year.

"(3) NEWLY ELIGIBLE SECTORS.—In addition to receiving a distribution of emission allowances under this section in the first distribution occurring after an industrial sector is designated as eligible under section 764(b)(3), the owner or operator of an entity in that eligible industrial sector may receive a prorated share of any emission allowances made available for distribution under this section that were not distributed for the year in which the petition for eligibility was granted under section 764(b)(3)(B).

"(b) CALCULATION OF DIRECT AND INDIRECT CARBON FACTORS.—

"(1) IN GENERAL.—

"(A) COVERED ENTITIES.—Except as provided in subsection (a), for covered entities that are in eligible industrial sectors, the amount of emission allowance rebates shall be based on the sum of the covered entity's direct and indirect carbon factors.

"(B) OTHER ELIGIBLE ENTITIES.—For entities that are in eligible industrial sectors but are not covered entities, the amount of emission allowance rebates shall be based on the entity's indirect carbon factor.

"(C) NEW ENTITIES.—Not later than 2 years after the date of enactment of this title, the Administrator shall issue regulations governing the distribution of emission allowance rebates for the first and second years of operation of a new entity in an eligible industrial sector. These regulations shall provide for—

"(i) the distribution of emission allowance rebates to such entities based on comparable entities in the same sector; and

"(ii) an adjustment in the third and fourth years of operation to reconcile the total amount of emission allowance rebates received during the first and second years of operation to the amount the entity would have received during the first and second years of operation had the appropriate data been available.

"(2) DIRECT CARBON FACTOR.—The direct carbon factor for a covered entity for a vintage year is the product of—

"(A) the average output of the covered entity for the two years preceding the year of the distribution; and

"(B) the most recent calculation of the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all covered entities in the sector, as determined by the Administrator under paragraph (4).

"(3) INDIRECT CARBON FACTOR.—

"(A) IN GENERAL.—The indirect carbon factor for an entity for a vintage year is the product obtained by multiplying the average output of the entity for the two years preceding the year of the distribution by both the electricity emissions intensity factor determined pursuant to subparagraph (B) and the electricity efficiency factor determined pursuant to subparagraph (C) for the year concerned.

"(B) ELECTRICITY EMISSIONS INTENSITY FACTOR.—Each person selling electricity to the owner or operator of an entity in any sector designated as an eligible industrial sector under section 764(b) shall provide the owner or operator of the entity and the Administrator, on an annual basis, the electricity emissions intensity factor for the entity. [The electricity emissions intensity factor for the entity, expressed in tons

of carbon dioxide equivalents per kilowatt hour, is determined by dividing—]

[“(i) the annual sum of the hourly product of—]

[“(I) the electricity purchased by the entity from that person in each hour (expressed in kilowatt hours); multiplied by]

[“(II) the marginal [or] weighted [average] tons of carbon dioxide equivalent per kilowatt hour that the person selling the electricity [charges] to the entity, taking into account the entity’s retail rate arrangements; by]

[“(ii) the total kilowatt hours of electricity purchased by the entity from that person during that year.]

“(C) ELECTRICITY EFFICIENCY FACTOR.—The electricity efficiency factor is the average amount of electricity (in kilowatt hours) used per unit of output for all entities in the relevant sector, as determined by the Administrator based on the best available data, including data provided under paragraph (6).

"(D) INDIRECT CARBON FACTOR REDUCTION.—If an electricity provider received a free allocation of emission allowances pursuant to section 782(a), the Administrator shall adjust the indirect carbon factor to avoid rebates to the eligible entity for costs that the Administrator determines were not incurred by the industrial entity because the allowances were freely allocated to the eligible entity's electricity provider and used for the benefit of industrial consumers.

"(4) GREENHOUSE GAS INTENSITY CALCULATIONS.—The Administrator shall calculate the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all covered entities in each eligible industrial sector every four years using an average of the two most recent years of the best available data.

"(5) ENSURING EFFICIENCY IMPROVEMENTS.—When making greenhouse gas calculations, the Administrator shall—

"(A) limit the average direct greenhouse gas emissions per unit of output, calculated under paragraph (4), for any eligible industrial sector to an amount that is not greater than it

was in any previous calculation under this subsection; and

"(B) limit the electricity emissions intensity factor, calculated under paragraph (3)(B) and resulting from a change in electricity supply, for any entity to an amount that is not greater than it was during any previous year.

"(6) DATA SOURCES.—For the purposes of this subsection—

"(A) the Administrator shall use data from the greenhouse gas registry established under section 713, where it is available; and

"(B) each owner or operator of an entity in an eligible industrial sector and each department, agency, and instrumentality of the United States shall provide the Administrator with such information as the Administrator finds necessary to determine the direct carbon factor and the indirect carbon factor for each entity subject to this section.

"(c) TOTAL MAXIMUM DISTRIBUTION.—Notwithstanding subsections (a) and (b), the Administrator shall not distribute more allowances for any vintage year pursuant to this section than are allocated for use under this part pursuant to section 782(e) for that vintage year. For

any vintage year for which the total emission allowance rebates calculated pursuant to this section exceed the number of allowances allocated pursuant to section 782(e), the Administrator shall reduce each entity's distribution on a pro rata basis so that the total distribution under this section equals the number of allowances allocated under section 782(e).

"Subpart 2—International Reserve Allowance Program

"SEC. 766. INTERNATIONAL RESERVE ALLOWANCE PROGRAM.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—If the President takes an action described in section 767(c)(3)(B) with respect to a sector then, not later than 24 months after that determination, the Administrator shall issue regulations—

"(A) determining an appropriate price for and offering for sale to United States importers international reserve allowances;

"(B) requiring the submission of appropriate amounts of such allowances in conjunction with the importation into the United States of a primary product produced or manufactured by that sector;

"(C) exempting from the requirements of subparagraph (B) primary products produced in—

"(i) a foreign country that the United Nations has identified as among the least developed of developing countries; or

"(ii) a foreign country that the President has determined to be responsible for less than 0.5 percent of total global greenhouse gas emissions; and

"(D) prohibiting the introduction into interstate commerce of a primary product without submitting the required number of international reserve allowances in accordance with such regulations, unless the product was produced by a covered entity under this title, or by an entity that is [or could be] regulated under this title.

"(2) PURPOSE OF PROGRAM.—The Administrator shall establish the program under paragraph (1) in a manner that addresses, consistent with international agreements to which the United States is a party, the competitive imbalance in the costs of producing or manufacturing primary products in in-

1 dustrial sectors resulting from the difference be-
2 tween—
3 "(A) the direct and indirect costs of com-
4 plying with this title; and
5 "(B) the direct and indirect costs, if any,
6 of complying in other countries with greenhouse
7 gas regulatory programs, requirements, or ex-
8 port tariffs, or other measures adopted or im-
9 posed that are related to the reduction of green-
10 house gas emissions.
11 "(3) EMISSION ALLOWANCE REBATES.—The
12 Administrator shall take into account the value of
13 emission allowance rebates distributed under subpart
14 1 when making calculations under paragraph (2).
15 "(4) LIMITATION.—The International Reserve
16 Allowance Program may not begin before January 1,
17 2025.
18 "(b) COVERED ENTITIES.—International reserve al-
19 lowances may not be held by covered entities to comply
20 with section 722.
21 **"Subpart 3—Presidential Determination**
22 **"SEC. 767. PRESIDENTIAL REPORTS AND DETERMINA-**
23 **TIONS.**
24 "(a) REPORT.—Not later than January 1, 2018, the
25 President shall submit a report to Congress on the effec-

1 tiveness of the distribution of emission allowance rebates
2 under subpart 1 in mitigating carbon leakage in industrial
3 sectors. Such report shall also include—

4 "(1) recommendations on how to better achieve
5 the purposes of this part, including an assessment of
6 the feasibility and usefulness of an International Re-
7 serve Allowance Program; and

8 "(2) an assessment of the amount and duration
9 of assistance, including distribution of free allow-
10 ances, being provided to eligible industrial sectors in
11 other developed countries to mitigate costs of com-
12 pliance with domestic greenhouse gas reduction pro-
13 grams in such countries.

14 "(b) PRESIDENTIAL DETERMINATION.—Not later
15 than June 30, 2022, and every four years thereafter, the
16 President, in consultation with the Administrator and
17 other appropriate agencies, shall determine, for each eligi-
18 ble industrial sector, whether more than 70 percent of
19 global output for that sector is produced or manufactured
20 in countries that have met at least one of the following
21 criteria:

22 "(1) The country is a party to an international
23 agreement to which the United States is a party
24 that includes a nationally enforceable greenhouse gas
25 emissions reduction commitment for that country

that is at least as stringent as that of the United States.

"(2) The country is a party to a multilateral or bilateral emission reduction agreement for that sector to which the United States is a party.

"(3) The country has an annual energy or greenhouse gas intensity, as described in section 764(b)(2)(A)(i), for the sector that is equal to or less than the energy or greenhouse gas intensity for such sector in the United States in the most recent calendar year for which data are available.

"(4) The country has implemented policies, including sectoral caps, export tariffs, production fees, electricity generation regulations, or greenhouse gas emissions fees, that individually or collectively impose an incremental increase on the cost of production associated with greenhouse gas emissions from the sector that is at least 60 percent of the cost of complying with this title in the United States for such sector, averaged over a two-year period.

"(c) EFFECT OF PRESIDENTIAL DETERMINATION.—If the President makes a determination under subsection (b) with respect to an eligible industrial sector that 70 percent or less of the global output for the sector is produced or manufactured in countries that have met one or

more of the criteria in subsection (b), then the President shall, not later than June 30, 2022, and every four years thereafter—

"(1) assess the extent to which the emission allowance rebates provided pursuant to subpart 1 have mitigated or addressed, or could mitigate or address, carbon leakage in that sector;

"(2) assess the extent to which an International Reserve Allowance Program has mitigated or addressed, or could mitigate or address, carbon leakage in that sector and the feasibility of establishing such a program; and

"(3) with respect to that sector—

"(A) modify the percentage by which direct and indirect carbon factors will be multiplied under section 765(a)(1)(B);

"(B) implement an International Reserve Allowance Program under section 766 for the products of the sector; or

"(C) take the actions in both subparagraph (A) and (B).

"(d) REPORT TO CONGRESS.—Not later than June 30, 2022, and every four years thereafter, the President shall transmit to the Congress a report providing notice of any determination made under subsection (b), explain-

ing the reasons for such determination, and identifying the actions taken by the President under subsection (c).

"(e) LIMITATION.—The President may only implement an International Reserve Allowance Program for sectors producing primary products.

"(f) IRON AND STEEL SECTOR.—For the purposes of this subpart, the Administrator shall consider to be in the same industrial sector—

"(1) entities using integrated iron and steelmaking technologies (including coke ovens, blast furnaces, and other iron-making technologies); and

"(2) entities using electric arc furnace technologies.".

Subtitle B—Green Jobs and Worker Transition

PART 1—GREEN JOBS

SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT GRANTS.

(a) AUTHORIZATION.—The Secretary of Education is authorized to award grants, on a competitive basis, to eligible partnerships to develop programs of study (containing the information described in section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2342)), that are focused on emerging careers and jobs in the fields of clean energy, renew-

able energy, energy efficiency, climate change mitigation, and climate change adaptation. The Secretary of Education shall consult with the Secretary of Labor and the Secretary of Energy prior to the issuance of a solicitation for grant applications.

(b) ELIGIBLE PARTNERSHIPS.—For purposes of this section, an eligible partnership shall include—

(1) at least 1 local educational agency eligible for funding under section 131 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2351) or an area career and technical education school or education service agency described in such section;

(2) at least 1 postsecondary institution eligible for funding under section 132 of such Act (20 U.S.C. 2352); and

(3) representatives of the community including business, labor organizations, and industry that have experience in fields as described in subsection (a).

(c) APPLICATION.—An eligible partnership seeking a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require. Applications shall include—

(1) a description of the eligible partners and partnership, the roles and responsibilities of each

partner, and a demonstration of each partner's capacity to support the program;

(2) a description of the career area or areas within the fields as described in subsection (a) to be developed, the reason for the choice, and evidence of the labor market need to prepare students in that area;

(3) a description of the new or existing program of study and both secondary and postsecondary components;

(4) a description of the students to be served by the new program of study;

(5) a description of how the program of study funded by the grant will be replicable and disseminated to schools outside of the partnership, including urban and rural areas;

(6) a description of applied learning that will be incorporated into the program of study and how it will incorporate or reinforce academic learning;

(7) a description of how the program of study will be delivered;

(8) a description of how the program will provide accessibility to students, especially economically disadvantaged, low performing, and urban and rural students;

(9) a description of how the program will address placement of students in nontraditional fields as described in section 3(20) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(20)); and

(10) a description of how the applicant proposes to consult or has consulted with a labor organization, labor management partnership, apprenticeship program, or joint apprenticeship and training program that provides education and training in the field of study for which the applicant proposes to develop a curriculum.

(d) PRIORITY.—The Secretary shall give priority to applications that—

(1) use online learning or other innovative means to deliver the program of study to students, educators, and instructors outside of the partnership; and

(2) focus on low performing students and special populations as defined in section 3(29) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(29)).

(e) PEER REVIEW.—The Secretary shall convene a peer review process to review applications for grants under this section and to make recommendations regarding the

selection of grantees. Members of the peer review committee shall include—

(1) educators who have experience implementing curricula with comparable purposes; and

(2) business and industry experts in fields as described in subsection (a).

(f) USES OF FUNDS.—Grants awarded under this section shall be used for the development, implementation, and dissemination of programs of study (as described in section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act (20 U.S.C. 2342(c)(1)(A))) in career areas related to clean energy, renewable energy, energy efficiency, climate change mitigation, and climate change adaptation.

SEC. 422. INCREASED FUNDING FOR ENERGY WORKER TRAINING PROGRAM.

Section 171(e)(8) of the Workforce Investment Act of 1998 (29 U.S.C. 2916(e)(8)) is amended by striking "$125,000,000" and inserting "$150,000,000".

PART 2—CLIMATE CHANGE WORKER ADJUSTMENT ASSISTANCE

SEC. 425. PETITIONS, ELIGIBILITY REQUIREMENTS, AND DETERMINATIONS.

(a) PETITIONS.—

(1) FILING.—A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this part may be filed by any of the following:

(A) The group of workers.

(B) The certified or recognized union or other duly authorized representative of such workers.

(C) Employers of such workers, one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act, on behalf of such workers.

The petition shall be filed simultaneously with the Secretary of Labor and with the Governor of the State in which such workers' employment site is located.

(2) ACTION BY GOVERNORS.—Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) ensure that rapid response activities and appropriate core and intensive services (as described in section 134 of the Workforce In-

vestment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

(3) ACTION BY THE SECRETARY.—Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register and on the website of the Department of Labor that the Secretary has received the petition and initiated an investigation.

(4) HEARINGS.—If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under paragraph (3) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(b) ELIGIBILITY.—

(1) IN GENERAL.—A group of workers shall be certified by the Secretary as eligible to apply for ad-

justment assistance under this part pursuant to a petition filed under subsection (a) if—

(A) the group of workers is employed in—

(i) energy producing and transforming industries;

(ii) industries dependent upon energy industries;

(iii) energy-intensive manufacturing industries;

(iv) consumer goods manufacturing; or

(v) other industries whose employment the Secretary determines has been adversely affected by any requirement of title VII of the Clean Air Act;

(B) the Secretary determines that a significant number or proportion of the workers in such workers' employment site have become totally or partially separated, or are threatened to become totally or partially separated from employment; and

(C) the sales, production, or delivery of goods or services have decreased as a result of any requirement of title VII of the Clean Air Act, including—

(i) the shift from reliance upon fossil fuels to other sources of energy, including renewable energy, that results in the closing of a facility or layoff of employees at a facility that mines, produces, processes, or utilizes fossil fuels to generate electricity;

(ii) a substantial increase in the cost of energy required for a manufacturing facility to produce items whose prices are competitive in the marketplace, to the extent the cost is not offset by allowance allocation to the facility pursuant to title VII of the Clean Air Act; or

(iii) other documented occurrences that the Secretary determines are indicators of an adverse impact on an industry described in subparagraph (A) as a result of any requirement of title VII of the Clean Air Act.

(2) WORKERS IN PUBLIC AGENCIES.—A group of workers in a public agency shall be certified by the Secretary as eligible to apply for climate change adjustment assistance pursuant to a petition filed if the Secretary determines that a significant number

or proportion of the workers in the public agency have become totally or partially separated from employment, or are threatened to become totally or partially separated as a result of any requirement of title VII of the Clean Air Act.

(3) ADVERSELY AFFECTED SERVICE WORKERS.—A group of workers shall be certified as eligible to apply for climate change adjustment assistance pursuant to a petition filed if the Secretary determines that—

(A) a significant number or proportion of the service workers at an employment site where a group of workers has been certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to paragraph (1) have become totally or partially separated from employment, or are threatened to become totally or partially separated; and

(B) a loss of business in the firm providing service workers to an employment site is directly attributable to one or more of the documented occurrences listed in paragraph (1)(C).

(c) AUTHORITY TO INVESTIGATE AND COLLECT INFORMATION.—

(1) IN GENERAL.—The Secretary shall, in determining whether to certify a group of workers under subsection (d), obtain information the Secretary determines to be necessary to make the certification, through questionnaires and in such other manner as the Secretary determines appropriate from—

(A) the workers' employer;

(B) officials of certified or recognized unions or other duly authorized representatives of the group of workers; or

(C) one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)); or

(2) VERIFICATION OF INFORMATION.—The Secretary shall require an employer, union, or one-stop operator or partner to certify all information obtained under paragraph (1) from the employer, union, or one-stop operator or partner (as the case may be) on which the Secretary relies in making a determination under subsection (d), unless the Secretary has a reasonable basis for determining that such information is accurate and complete without being certified.

(3) PROTECTION OF CONFIDENTIAL INFORMATION.—The Secretary may not release information obtained under paragraph (1) that the Secretary considers to be confidential business information unless the employer submitting the confidential business information had notice, at the time of submission, that the information would be released by the Secretary, or the employer subsequently consents to the release of the information. Nothing in this paragraph shall be construed to prohibit the Secretary from providing such confidential business information to a court in camera or to another party under a protective order issued by a court.

(d) DETERMINATION BY THE SECRETARY OF LABOR.—

(1) IN GENERAL.—As soon as possible after the date on which a petition is filed under subsection (a), but in any event not later than 40 days after that date, the Secretary, in consultation with the Secretary of Energy and the Administrator, as necessary, shall determine whether the petitioning group meets the requirements of subsection (b) and shall issue a certification of eligibility to apply for assistance under this part covering workers in any group which meets such requirements. Each certifi-

cation shall specify the date on which the total or partial separation began or threatened to begin. Upon reaching a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register and on the website of the Department of Labor, together with the Secretary's reasons for making such determination.

(2) ONE YEAR LIMITATION.—A certification under this section shall not apply to any worker whose last total or partial separation from the employment site before the worker's application under section 426(a) occurred more than 1 year before the date of the petition on which such certification was granted.

(3) REVOCATION OF CERTIFICATION.—Whenever the Secretary determines, with respect to any certification of eligibility of the workers of an employment site, that total or partial separations from such site are no longer a result of the factors specified in subsection (b)(1), the Secretary shall terminate such certification and promptly have notice of such termination published in the Federal Register and on the website of the Department of Labor, together with the Secretary's reasons for making such

determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

(e) INDUSTRY NOTIFICATION OF ASSISTANCE.—Upon receiving a notification of a determination under subsection (d) with respect to a domestic industry the Secretary of Labor shall notify the representatives of the domestic industry affected by the determination, employers publicly identified by name during the course of the proceeding relating to the determination, and any certified or recognized union or, to the extent practicable, other duly authorized representative of workers employed by such representatives of the domestic industry, of—

(1) the adjustment allowances, training, and other benefits available under this part;

(2) the manner in which to file a petition and apply for such benefits; and

(3) the availability of assistance in filing such petitions;

(4) notify the Governor of each State in which one or more employers in such industry are located of the Secretary's determination and the identity of the employers; and

(5) upon request, provide any assistance that is necessary to file a petition under subsection (a).

(f) BENEFIT INFORMATION TO WORKERS, PROVIDERS OF TRAINING.—

(1) IN GENERAL.—The Secretary shall provide full information to workers about the adjustment allowances, training, and other benefits available under this part and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 426(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency, the one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801), and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under subsection (d) and of projections, if available, of the needs for training under as a result of such certification.

(2) NOTICE BY MAIL.—The Secretary shall provide written notice through the mail of the benefits available under this part to each worker whom the Secretary has reason to believe is covered by a certification made under subsection (d)—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or—

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(3) NEWSPAPERS; WEBSITE.—The Secretary shall publish notice of the benefits available under this part to workers covered by each certification made under subsection (d) in newspapers of general circulation in the areas in which such workers reside and shall make such information available on the website of the Department of Labor.

SEC. 426. PROGRAM BENEFITS.

(a) CLIMATE CHANGE ADJUSTMENT ALLOWANCE.—

(1) ELIGIBILITY.—Payment of a climate change adjustment allowance shall be made to an adversely affected worker covered by a certification under sec-

tion 425(b) who files an application for such allowance for any week of unemployment which begins on or after the date of such certification, if the following conditions are met:

(A) Such worker's total or partial separation before the worker's application under this part occurred—

(i) on or after the date, as specified in the certification under which the worker is covered, on which total or partial separation began or threatened to begin in the adversely affected employment;

(ii) before the expiration of the 2-year period beginning on the date on which the determination under section 425(d) was made; and

(iii) before the termination date, if any, determined pursuant to section 425(d)(3).

(B) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of full-time employment or 1,040 hours of part time employment in adversely affected employment, or, if data with respect to weeks of

employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(i) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training;

(ii) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States;

(iii) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm; or

(iv) is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is ''Federal service'' as defined in section 8521(a)(1) of title 5, United States Code,

shall be treated as a week of employment.

(C) Such worker is enrolled in a training program approved by the Secretary under subsection (b)(2).

(2) INELIGIBILITY FOR CERTAIN OTHER BENEFITS.—An adversely affected worker receiving a payment under this section shall be ineligible to receive any other form of unemployment insurance for the period in which such worker is receiving a climate change adjustment allowance under this section.

(3) REVOCATION.—If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of paragraph (1)(C); or

(II) has ceased to participate in such training program before completing such training program; and

(ii) there is no justifiable cause for such failure or cessation; or

(B) the certification made with respect to such worker under section 425(d) is revoked under paragraph (3) of such section,

no adjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved by the Secretary under section (b)(2).

(4) WAIVERS OF TRAINING REQUIREMENTS.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (b)(2) if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more of the following reasons:

(A) RECALL.—The worker has been notified that the worker will be recalled by the employer from which the separation occurred.

(B) MARKETABLE SKILLS.—

(i) IN GENERAL.—The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance

with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(ii) MARKETABLE SKILLS DEFINED.—For purposes of clause (i), the term ''marketable skills'' may include the possession of a postgraduate degree from an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) or an equivalent institution, or the possession of an equivalent postgraduate certification in a specialized field.

(C) RETIREMENT.—The worker is within 2 years of meeting all requirements for entitlement to either—

(i) old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) (except for application therefor); or

(ii) a private pension sponsored by an employer or labor organization.

(D) HEALTH.—The worker is unable to participate in training due to the health of the

worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(E) ENROLLMENT UNAVAILABLE.—The first available enrollment date for the training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(F) TRAINING NOT AVAILABLE.—Training described in subsection (b)(2) is not reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at a reasonable cost, or no training funds are available.

(5) WEEKLY AMOUNTS.—The climate change adjustment allowance payable to an adversely affected worker for a week of unemployment shall be an amount equal to 70 percent of the average weekly wage of such worker, but in no case shall such amount exceed the average weekly wage for all workers in the State where the adversely affected worker resides.

(6) MAXIMUM DURATION OF BENEFITS.—An eligible worker may receive a climate change adjustment allowance under this subsection for a period of not longer than 156 weeks.

(b) EMPLOYMENT SERVICES AND TRAINING.—

(1) INFORMATION AND EMPLOYMENT SERVICES.—The Secretary shall make available, directly or through agreements with the States under section 427(a) to adversely affected workers covered by a certification under section 425(a) the following information and employment services:

(A) Comprehensive and specialized assessment of skill levels and service needs, including through—

(i) diagnostic testing and use of other assessment tools; and

(ii) in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(B) Development of an individual employment plan to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

(C) Information on training available in local and regional areas, information on individual counseling to determine which training is suitable training, and information on how to apply for such training.

(D) Information on training programs and other services provided by a State pursuant to title I of the Workforce Investment Act of 1998 and available in local and regional areas, information on individual counseling to determine which training is suitable training, and information on how to apply for such training.

(E) Information on how to apply for financial aid, including referring workers to educational opportunity centers described in section 402F of the Higher Education Act of 1965 (20 U.S.C. 1070a–16), where applicable, and notifying workers that the workers may request fi-

nancial aid administrators at institutions of higher education (as defined in section 102 of such Act (20 U.S.C. 1002)) to use the administrators' discretion under section 479A of such Act (20 U.S.C. 1087tt) to use current year income data, rather than preceding year income data, for determining the amount of need of the workers for Federal financial assistance under title IV of such Act (20 U.S.C. 1070 et seq.).

(F) Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for employment or training.

(G) Individual career counseling, including job search and placement counseling, during the period in which the individual is receiving a climate change adjustment allowance or training under this part, and after receiving such training for purposes of job placement.

(H) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) job vacancy listings in such labor market areas;

(ii) information on jobs skills necessary to obtain jobs identified in job vacancy listings described in subparagraph (A);

(iii) information relating to local occupations that are in demand and earnings potential of such occupations; and

(iv) skills requirements for local occupations described in subparagraph (C).

(I) Information relating to the availability of supportive services, including services relating to child care, transportation, dependent care, housing assistance, and need-related payments that are necessary to enable an individual to participate in training.

(2) TRAINING.—

(A) APPROVAL OF AND PAYMENT FOR TRAINING.—If the Secretary determines, with respect to an adversely affected worker that—

(i) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker;

(ii) the worker would benefit from appropriate training;

(iii) there is a reasonable expectation of employment following completion of such training;

(iv) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (including area career and technical education schools, as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006, and employers);

(v) the worker is qualified to undertake and complete such training; and

(vi) such training is suitable for the worker and available at a reasonable cost,

the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on the worker's behalf by the Secretary directly or through a voucher system.

(B) DISTRIBUTION.—The Secretary shall establish procedures for the distribution of the funds to States to carry out the training programs approved under this paragraph, and shall make an initial distribution of the funds made available as soon as practicable after the beginning of each fiscal year.

(C) ADDITIONAL RULES REGARDING APPROVAL OF AND PAYMENT FOR TRAINING.—

(i) For purposes of applying subparagraph (A)(iii), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under such subparagraph.

(ii) If the costs of training an adversely affected worker are paid by the Secretary under subparagraph (A), no other payment for such costs may be made under any other provision of Federal law. No payment may be made under subparagraph (A) of the costs of training an adversely affected worker or an adversely affected incumbent worker if such costs—

(I) have already been paid under any other provision of Federal law; or

(II) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

The provisions of this clause shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(D) TRAINING PROGRAMS.—The training programs that may be approved under subparagraph (A) include—

(i) employer-based training, including—

(I) on-the-job training if approved by the Secretary under subsection (c); and

(II) joint labor-management apprenticeship programs;

(ii) any training program provided by a State pursuant to title I of the Workforce Investment Act of 1998;

(iii) any training program approved by a private industry council established under section 102 of such Act;

(iv) any programs in career and technical education described in section 3(5) of the Carl D. Perkins Career and Technical Education Act of 2006;

(v) any program of remedial education;

(vi) any program of prerequisite education or coursework required to enroll in training that may be approved under this paragraph;

(vii) any training program for which all, or any portion, of the costs of training the worker are paid—

(I) under any Federal or State program other than this part; or

(II) from any source other than this part;

(viii) any training program or coursework at an accredited institution of higher education (described in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), including a training program or coursework for the purpose of—

(I) obtaining a degree or certification; or

(II) completing a degree or certification that the worker had previously begun at an accredited institution of higher education; and

(ix) any other training program approved by the Secretary.

(3) SUPPLEMENTAL ASSISTANCE.—The Secretary may, as appropriate, authorize supplemental assistance that is necessary to defray reasonable transportation and subsistence expenses for separate maintenance in a case in which training for a worker is provided in a facility that is not within commuting distance of the regular place of residence of the worker.

(c) ON-THE-JOB TRAINING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may approve on-the-job training for any adversely affected worker if—

(A) the Secretary determines that on-the-job training—

(i) can reasonably be expected to lead to suitable employment with the employer offering the on-the-job training;

(ii) is compatible with the skills of the worker;

(iii) includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

(iv) can be measured by benchmarks that indicate that the worker is gaining such knowledge or skills; and

(B) the State determines that the on-the-job training program meets the requirements of clauses (iii) and (iv) of subparagraph (A).

(2) MONTHLY PAYMENTS.—The Secretary shall pay the costs of on-the-job training approved under paragraph (1) in monthly installments.

(3) CONTRACTS FOR ON-THE-JOB TRAINING.—

(A) IN GENERAL.—The Secretary shall ensure, in entering into a contract with an employer to provide on-the-job training to a worker under this subsection, that the skill require-

ments of the job for which the worker is being trained, the academic and occupational skill level of the worker, and the work experience of the worker are taken into consideration.

(B) TERM OF CONTRACT.—Training under any such contract shall be limited to the period of time required for the worker receiving on-the-job training to become proficient in the job for which the worker is being trained, but may not exceed 156 weeks in any case.

(4) EXCLUSION OF CERTAIN EMPLOYERS.—The Secretary shall not enter into a contract for on-the-job training with an employer that exhibits a pattern of failing to provide workers receiving on-the-job training from the employer with—

(A) continued, long-term employment as regular employees; and

(B) wages, benefits, and working conditions that are equivalent to the wages, benefits, and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work as workers receiving on-the-job training from the employer.

(d) ADMINISTRATIVE AND EMPLOYMENT SERVICES FUNDING.—

(1) ADMINISTRATIVE FUNDING.—In addition to any funds made available to a State to carry out this section for a fiscal year, the State shall receive for the fiscal year a payment in an amount that is equal to 15 percent of the amount of such funds and shall—

(A) use not more than ⅔ of such payment for the administration of the climate change adjustment assistance for workers program under this part, including for—

(i) processing waivers of training requirements under subsection (a)(4);

(ii) collecting, validating, and reporting data required under this part; and

(iii) administering the Climate Change Adjustment Assistance Allowance payments; and

(B) use not less than ⅓ of such payment for information and employment services under subsection (b)(1).

(2) EMPLOYMENT SERVICES FUNDING.—

(A) IN GENERAL.—In addition to any funds made available to a State to carry out

subsection (b)(2) and the payment under paragraph (1) for a fiscal year, the Secretary shall provide to the State for the fiscal year a reasonable payment for the purpose of providing employment and services under subsection (b)(1).

(B) VOLUNTARY RETURN OF FUNDS.—A State that receives a payment under subparagraph (A) may decline or otherwise return such payment to the Secretary.

(e) JOB SEARCH ALLOWANCES.—The Secretary of Labor may provide adversely affected workers a one-time job search allowance in accordance with regulations prescribed by the Secretary. Any job search allowance provided shall be available only under the following circumstances and conditions:

(1) The worker is no longer eligible for the climate change adjustment allowance under subsection (a) and has completed the training program required by subsection (a)(1)(E).

(2) The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(3) An allowance granted shall provide reimbursement to the worker of all necessary job search

expenses as prescribed by the Secretary in regulations. Such reimbursement under this subsection may not exceed $1,500 for any worker.

(f) RELOCATION ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—Any adversely affected worker covered by a certification issued under section 425 may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this subsection.

(2) CONDITIONS FOR GRANTING ALLOWANCE.—A relocation allowance may be granted if all of the following terms and conditions are met:

(A) ASSIST AN ADVERSELY AFFECTED WORKER.—The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) LOCAL EMPLOYMENT NOT AVAILABLE.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) TOTAL SEPARATION.—The worker is totally separated from employment at the time relocation commences.

(D) SUITABLE EMPLOYMENT OBTAINED.—The worker—

(i) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate; or

(ii) has obtained a bona fide offer of such employment.

(E) APPLICATION.—The worker filed an application with the Secretary at such time and in such manner as the Secretary shall specify by regulation.

(3) AMOUNT OF ALLOWANCE.—The relocation allowance granted to a worker under paragraph (1) includes—

(A) all reasonable and necessary expenses (including, subsistence and transportation expenses at levels not exceeding amounts prescribed by the Secretary in regulations) incurred in transporting the worker, the worker's family, and household effects; and

(B) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,500.

(4) LIMITATIONS.—A relocation allowance may not be granted to a worker unless—

(A) the relocation occurs within 182 days after the filing of the application for relocation assistance; or

(B) the relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under subsection (b)(2).

(g) HEALTH INSURANCE CONTINUATION.—Not later than 1 year after the date of enactment of this part, the Secretary of Labor shall prescribe regulations to provide, for the period in which an adversely affected worker is participating in a training program described in subsection (b)(2), 80 percent of the monthly premium of any health insurance coverage that an adversely affected worker was receiving from such worker's employer prior to the separation from employment described in section 425(b), to be paid to any health care insurance plan designated by the adversely affected worker receiving an allowance under this section.

SEC. 427. GENERAL PROVISIONS.

(a) AGREEMENTS WITH STATES.—

(1) IN GENERAL.—The Secretary is authorized on behalf of the United States to enter into an

agreement with any State, or with any State agency (referred to in this section as ''cooperating States'' and ''cooperating States agencies'' respectively). Under such an agreement, the cooperating State agency—

(A) as agent of the United States, shall receive applications for, and shall provide, payments on the basis provided in this part;

(B) in accordance with paragraph (6), shall make available to adversely affected workers covered by a certification under section 425(d) the employment services described in section 426(b)(1);

(C) shall make any certifications required under section 425(d);

(D) shall otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this part.

Each agreement under this section shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(2) FORM AND MANNER OF DATA.—Each agreement under this section shall—

(A) provide the Secretary with the authority to collect any data the Secretary determines necessary to meet the requirements of this part; and

(B) specify the form and manner in which any such data requested by the Secretary shall be reported.

(3) RELATIONSHIP TO UNEMPLOYMENT INSURANCE.—Each agreement under this section shall provide that an adversely affected worker receiving a climate change adjustment allowance under this part shall not be eligible for unemployment insurance otherwise payable to such worker under the laws of the State.

(4) REVIEW.—A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(5) COORDINATION.—Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under section 426 and under title I of the

Workforce Investment Act of 1998 upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this part.

(6) RESPONSIBILITIES OF COOPERATING AGENCIES.—Each cooperating State agency shall, in carrying out paragraph (1)(B)—

(A) advise each worker who applies for unemployment insurance of the benefits under this part and the procedures and deadlines for applying for such benefits;

(B) facilitate the early filing of petitions under section 425(a) for any workers that the agency considers are likely to be eligible for benefits under this part;

(C) advise each adversely affected worker to apply for training under section 426(b) before, or at the same time, the worker applies for climate change adjustment allowances under section 426(a);

(D) perform outreach to, intake of, and orientation for adversely affected workers and

adversely affected incumbent workers covered by a certification under section 426(a) with respect to assistance and benefits available under this part;

(E) make employment services described in section 426(b)(1) available to adversely affected workers and adversely affected incumbent workers covered by a certification under section 425(d) and, if funds provided to carry out this part are insufficient to make such services available, make arrangements to make such services available through other Federal programs; and

(F) provide the benefits and reemployment services under this part in a manner that is necessary for the proper and efficient administration of this part, including the use of state agency personnel employed in accordance with a merit system of personnel administration standards, including—

(i) making determinations of eligibility for, and payment of, climate change readjustment allowances and health care benefit replacement amounts;

(ii) developing recommendations regarding payments as a bridge to retirement and lump sum payments to pension plans in accordance with this subsection; and

(iii) the provision of reemployment services to eligible workers, including referral to training services.

(7) In order to promote the coordination of workforce investment activities in each State with activities carried out under this part, any agreement entered into under this section shall provide that the State shall submit to the Secretary, in such form as the Secretary may require, the description and information described in paragraphs (8) and (14) of section 112(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2822(b)) and a description of the State's rapid response activities under section 221(a)(2)(A).

(8) CONTROL MEASURES.—

(A) IN GENERAL.—The Secretary shall require each cooperating State and cooperating State agency to implement effective control measures and to effectively oversee the operation and administration of the climate change

adjustment assistance program under this part, including by means of monitoring the operation of control measures to improve the accuracy and timeliness of the data being collected and reported.

(B) DEFINITION.—For purposes of subparagraph (A), the term ''control measures'' means measures that—

(i) are internal to a system used by a State to collect data; and

(ii) are designed to ensure the accuracy and verifiability of such data.

(9) DATA REPORTING.—

(A) IN GENERAL.—Any agreement entered into under this section shall require the cooperating State or cooperating State agency to report to the Secretary on a quarterly basis comprehensive performance accountability data, to consist of—

(i) the core indicators of performance described in subparagraph (B)(i);

(ii) the additional indicators of performance described in subparagraph (B)(ii), if any; and

(iii) a description of efforts made to improve outcomes for workers under the climate change adjustment assistance program.

(B) CORE INDICATORS DESCRIBED.—

(i) IN GENERAL.—The core indicators of performance described in this subparagraph are—

(I) the percentage of workers receiving benefits under this part who are employed during the second calendar quarter following the calendar quarter in which the workers cease receiving such benefits;

(II) the percentage of such workers who are employed in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits; and

(III) the earnings of such workers in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits.

(ii) ADDITIONAL INDICATORS.—The Secretary and a cooperating State or cooperating State agency may agree upon additional indicators of performance for the climate change adjustment assistance program under this part, as appropriate.

(C) STANDARDS WITH RESPECT TO RELIABILITY OF DATA.—In preparing the quarterly report required by subparagraph (A), each cooperating State or cooperating State agency shall establish procedures that are consistent with guidelines to be issued by the Secretary to ensure that the data reported are valid and reliable.

(10) VERIFICATION OF ELIGIBILITY FOR PROGRAM BENEFITS.—

(A) IN GENERAL.—An agreement under this section shall provide that the State shall periodically redetermine that a worker receiving benefits under this part who is not a citizen or national of the United States remains in a satisfactory immigration status. Once satisfactory immigration status has been initially verified through the immigration status verification system described in section 1137(d) of the Social

Security Act (42 U.S.C. 1320b-7(d)) for purposes of establishing a worker's eligibility for unemployment compensation, the State shall reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this part. The State shall conduct such redetermination in a timely manner, utilizing the immigration status verification system described in section 1137(d) of the Social Security Act (42 U.S.C. 1320b-7(d)).

(B) PROCEDURES.—The Secretary shall establish procedures to ensure the uniform application by the States of the requirements of this paragraph.

(b) ADMINISTRATION ABSENT STATE AGREEMENT.—

(1) In any State where there is no agreement in force between a State or its agency under subsection (a), the Secretary shall promulgate regulations for the performance of all necessary functions under section 426, including provision for a fair hearing for any worker whose application for payments is denied.

(2) A final determination under paragraph (1) with respect to entitlement to program benefits under section 426 is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

(c) PROHIBITION ON CONTRACTING WITH PRIVATE ENTITIES.—Neither the Secretary nor a State may contract with any private for-profit or nonprofit entity for the administration of the climate change adjustment assistance program under this part.

(d) PAYMENT TO THE STATES.—

(1) IN GENERAL.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this part.

(2) RESTRICTION.—All money paid a State under this subsection shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this section, to the Secretary of the Treasury.

(3) BONDS.—Any agreement under this section may require any officer or employee of the State cer-

tifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this part.

(e) LABOR STANDARDS.—

(1) PROHIBITION ON DISPLACEMENT.—An individual in an apprenticeship program or on-the-job training program under this part shall not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any employed employee.

(2) PROHIBITION ON IMPAIRMENT OF CONTRACTS.—An apprenticeship program or on-the-job raining program under this Act shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

(3) ADDITIONAL STANDARDS.—The Secretary, or a State acting under an agreement described in

subsection (a) may pay the costs of on-the-job training, notwithstanding any other provision of this section, only if—

(A) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained;

(B) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(C) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 425(d);

(D) the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training; and

(E) the employer has not received payment under with respect to any other on-the-job training provided by such employer which failed

to meet the requirements of subparagraphs (A) through (D).

(f) DEFINITIONS.—As used in this part the following definitions apply:

(1) The term ''adversely affected employment'' means employment at an employment site, if workers at such site are eligible to apply for adjustment assistance under this part.

(2) The term ''adversely affected worker'' means an individual who has been totally or partially separated from employment and is eligible to apply for adjustment assistance under this part.

(3) The term ''average weekly wage'' means 1/13 of the total wages paid to an individual in the quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(4) The term ''average weekly hours'' means the average hours worked by the individual (excluding overtime) in the employment from which he has

been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(5) The term ''benefit period'' means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation; or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(6) The term ''consumer goods manufacturing'' means the electrical equipment, appliance, and component manufacturing industry and transportation equipment manufacturing.

(7) The term ''employment site'' means a single facility or site of employment.

(8) The term ''energy-intensive manufacturing industries'' means all industrial sectors, entities, or groups of entities that meet the energy or greenhouse gas intensity criteria in section

765(b)(2)(A)(i) of the Clean Air Act based on the most recent data available.

(9) The term ''energy producing and transforming industries'' means the coal mining industry, oil and gas extraction, electricity power generation, transmission and distribution, and natural gas distribution.

(10) The term ''industries dependent on energy industries'' means rail transportation and pipeline transportation.

(11) The term ''on-the-job training'' means training provided by an employer to an individual who is employed by the employer.

(12) The terms ''partial separation'' and ''partially separated'' refer, with respect to an individual who has not been totally separated, that such individual has had—

(A) his or her hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment; and

(B) his or her wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

(13) The term ''public agency'' means a department or agency of a State or political subdivision of a State or of the Federal government.

(14) The term ''Secretary'' means the Secretary of Labor.

(15) The term ''service workers'' means workers supplying support or auxiliary services to an employment site.

(16) The term ''State agency'' means the agency of the State which administers the State law.

(17) The term ''State law'' means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(18) The terms ''total separation'' and ''totally separated'' refer to the layoff or severance of an individual from employment with an employer in which adversely affected employment exists.

(19) The term ''unemployment insurance'' means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms ''regular compensation'', ''additional compensation'', and ''ex-

tended compensation'' have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note.)

(20) The term ''week'' means a week as defined in the applicable State law.

(21) The term ''week of unemployment'' means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(g) SPECIAL RULE WITH RESPECT TO MILITARY SERVICE.—

(1) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may waive any requirement of this part that the Secretary determines is necessary to ensure that an adversely affected worker who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (2) is eligible to receive a climate change adjustment allowance, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty.

(2) PERIOD OF DUTY DESCRIBED.—An adversely affected worker serves a period of duty described in this paragraph if, before completing training under this part, the worker—

(A) serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(B) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under section 502(f) of title 32, United States Code, for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(h) FRAUD AND RECOVERY OF OVERPAYMENTS.—

(1) RECOVERY OF PAYMENTS TO WHICH AN INDIVIDUAL WAS NOT ENTITLED.—If the Secretary or a court of competent jurisdiction determines that any person has received any payment under this part to which the individual was not entitled, such individual shall be liable to repay such amount to the Secretary, as the case may be, except that the

Secretary shall waive such repayment if such agency or the Secretary determines that—

(A) the payment was made without fault on the part of such individual; and

(B) requiring such repayment would cause a financial hardship for the individual (or the individual's household, if applicable) when taking into consideration the income and resources reasonably available to the individual (or household) and other ordinary living expenses of the individual (or household).

(2) MEANS OF RECOVERY.—Unless an overpayment is otherwise recovered, or waived under paragraph (1), the Secretary shall recover the overpayment by deductions from any sums payable to such person under this part, under any Federal unemployment compensation law or other Federal law administered by the Secretary which provides for the payment of assistance or an allowance with respect to unemployment. Any amount recovered under this section shall be returned to the Treasury of the United States.

(3) PENALTIES FOR FRAUD.—Any person who—

(A) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for that person or for any other person any payment authorized to be furnished under this part; or

(B) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, when providing information to the Secretary during an investigation of a petition under section 425(c),

shall be imprisoned for not more than one year, or fined under title 18, United States Code, or both, and be ineligible for any further payments under this part.

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this part.

(j) STUDY ON OLDER WORKERS.—The Secretary shall conduct a study examine the circumstances of older adversely affected workers and the ability of such workers to access their retirement benefits. The Secretary shall transmit a report to Congress not later than 2 years after the date of enactment of this part on the findings of the study and the Secretary's recommendations on how to en-

sure that adversely affected workers within 2 years of retirement are able to access their retirement benefits.

[(k) SPENDING LIMIT.—For each fiscal year, the total amount of funds disbursed for the purposes described in section 426 shall not exceed the amount deposited in that fiscal year into the Climate Change Worker Assistance Fund established under section [782(j)] of the Clean Air Act. The annual spending limit for any succeeding year shall be increased by the difference, if any, between the amount of the prior year's disbursements and the spending limitation for that year. The Secretary shall promulgate rules to ensure that this spending limit is not exceeded. Such rules shall provide that workers who receive any of the benefits described in section 426 receive full benefits, and shall include the establishment of a waiting list for workers in the event that the requests for assistance exceed the spending limit.]

Subtitle C—Consumer Assistance

SEC. 431. ENERGY REFUND PROGRAM.

The Social Security Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXII—ENERGY REFUND PROGRAM

"SEC. 2201. ENERGY REFUND PROGRAM.

"(a) IN GENERAL.—The Secretary shall formulate and administer the program provided for in this section, which shall be known as the 'Energy Refund Program', and under which eligible low-income households are provided cash payments to reimburse the households for the estimated loss in their purchasing power resulting from the American Clean Energy and Security Act of 2009.

"(b) ENTITLEMENT OF ELIGIBLE HOUSEHOLDS TO CASH PAYMENTS.—At the request of the State agency of a State, each eligible low-income household in the State shall be entitled to receive monthly cash payments under this section in an amount equal to the monthly energy refund amount determined under subsection (d).

"(c) ELIGIBILITY.—

"(1) ELIGIBLE HOUSEHOLDS.—A household shall be considered to be an eligible low-income household for purposes of this section if—

"(A) the gross income of the household does not exceed the greater of—

"(i) 150 percent of the poverty line; or

"(ii) the greatest amount of household gross income in respect of which a benefit could be payable under subsection (d)(2)(B);

"(B) the State agency of the State in which the household is located determines that the household is participating in—

"(i) the Supplemental Nutrition Assistance Program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

"(ii) the Food Distribution Program on Indian Reservations authorized by section 4(b) of such Act (7 U.S.C. 2013(b)); or

"(iii) the program for nutrition assistance in Puerto Rico or American Samoa under section 19 of such Act (7 U.S.C. 2028);

"(C) the household consists of a single individual or a married couple, and—

"(i) receives the subsidy described in section 1860D–14 of this Act (42 U.S.C. 1395w–114); or

"(ii)(I) participates in the program under title XVIII of this Act; and

"(II) meets the income requirements described in section 1860D–14(a)(1) or (a)(2) of this Act (42 U.S.C. 1395w–114(a)(1) or (a)(2)); or

"(D) the household consists of a single individual or a married couple, and receives benefits under the supplemental security income program under title XVI of this Act (42 U.S.C. 1381–1383f).

"(2) STREAMLINED PARTICIPATION FOR CERTAIN BENEFICIARIES.—The Secretary shall—

"(A) periodically estimate the number of eligible beneficiaries and households, and the number of participating beneficiaries and households, for the Energy Refund Program; and

"(B) develop procedures, in consultation with the Commissioner of Social Security, the Railroad Retirement Board, the Secretary of Veterans Affairs, and the State agencies, to ensure that low-income beneficiaries of the benefit programs administered by such entities receive

the energy refund for which the beneficiaries are eligible under the Energy Refund Program.

"(3) LIMITATION.—Notwithstanding any other provision of law, the Secretary shall provide refunds to United States citizens, United States nationals, and individuals lawfully residing in the United States who qualify for a refund under paragraph (1)(A), and shall establish procedures to ensure that other individuals do not receive refunds.

"(4) NATIONAL STANDARDS.—The Secretary shall consult with the Secretary of Agriculture and establish uniform national standards of eligibility ensuring that States may seamlessly co-administer the energy refund program with the Supplemental Nutrition Assistance Program in accordance with the provisions of this section. No State agency shall impose any other standard or requirement as a condition of eligibility or refund receipt under the program. Assistance in the Energy Refund Program shall be furnished promptly to all eligible households who make application for such participation or are already enrolled in any program referred to in paragraph (1).

"(d) MONTHLY ENERGY REFUND AMOUNT.—

"(1) ESTIMATED ANNUAL TOTAL LOSS IN PURCHASING POWER.—Not later than August 31 of each fiscal year, the Energy Information Administration shall estimate the annual total loss in purchasing power that will result from American Clean Energy and Security Act of 2009 in the next fiscal year for households of each size with gross income equal to 150 percent of the poverty line, based on the projected total market value of all compliance costs (including, but not limited to, the emissions allowances used to demonstrate compliance with title VII of the Clean Air Act in the next fiscal year, and excluding costs that are not projected to be incurred by households as a result of allowances freely allocated and intended for residential consumer assistance pursuant to sections 783 through 785 of the Clean Air Act), in a way generally recognized as suitable by experts.

"(2) MONTHLY ENERGY REFUND.—The monthly energy refund amount for an eligible household under this section shall be—

"(A) if the gross income of the household does not exceed 150 percent of the poverty line applicable to the household—

"(i) if the household has 1, 2, 3, or 4 members, 1/12 of the amount estimated under paragraph (1) for a household of the same size, rounded to the nearest whole dollar amount; or

"(ii) if the household has 5 or more members, 1/12 of the arithmetic mean value of the amounts estimated under paragraph (1) for households with 5 or more members, rounded to the nearest whole dollar amount; or

"(B) if the gross income of the household exceeds 150 percent of the poverty line applicable to the household, 1/12 of the amount (if any) by which—

"(i) the amount estimated under paragraph (1) for a household of the same size; exceeds

"(ii) 20 percent of the amount by which the gross income of the household exceeds 150 percent of the poverty line.

"(e) DELIVERY MECHANISM.—

"(1) Subject to standards and an implementation schedule set by the Secretary, the energy refund shall be provided in monthly installments via—

1 "(A) direct deposit into the eligible house-
2 hold's designated bank account;
3 "(B) the State's electronic benefit transfer
4 system; or
5 "(C) another Federal or State mechanism,
6 if such a mechanism is approved by the Sec-
7 retary.
8 "(2) Such standards shall include—
9 "(A)(i) defining the required level of recipi-
10 ent protection regarding privacy;
11 "(ii) guidance on how recipients are of-
12 fered choices, when relevant, about the delivery
13 mechanism;
14 "(iii) guidance on ease of use and access to
15 the refund, including the prohibition of fees
16 charged to recipients for withdrawals or other
17 services; and
18 "(iv) cost-effective protections against im-
19 proper accessing of the energy refund;
20 "(B) operating standards that provide for
21 interoperability between States and law enforce-
22 ment monitoring; and
23 "(C) other standards, as determined by the
24 Secretary or the Secretary's designee.
25 "(f) ADMINISTRATION.—

"(1) IN GENERAL.—The State agency of each participating State shall assume responsibility for the certification of applicant households and for the issuance of refunds and the control and accountability thereof.

"(2) PROCEDURES.—Under standards established by the Secretary, the State agency shall establish procedures governing the administration of the Energy Refund Program that the State agency determines best serve households in the State, including households with special needs, such as households with elderly or disabled members, households in rural areas, homeless individuals, and households residing on reservations as defined in the Indian Child Welfare Act of 1978 and the Indian Financing Act of 1974. In carrying out this paragraph, a State agency—

"(A) shall provide timely, accurate, and fair service to applicants for, and participants in, the Energy Refund Program;

"(B) shall permit an applicant household to apply to participate in the program at the time that the household first contacts the State agency, and shall consider an application that contains the name, address, and signature of

the applicant to be sufficient to constitute an application for participation;

"(C) shall screen any applicant household for the Supplemental Nutrition Assistance Program, the State's medical assistance program under section XIX of this Act, State Childrens Health Insurance Program under section XXI of this Act, and a State program that provides basic assistance under a State program funded under title IV of this Act or with qualified State expenditures as defined in section 409(a)(7) of this Act for eligibility for the Energy Refund Program and, if eligible, shall enroll such applicant household in the Energy Refund Program;

"(D) shall complete certification of and provide a refund to any eligible household not later than 30 days following its filing of an application;

"(E) shall use appropriate bilingual personnel and materials in the administration of the program in those portions of the State in which a substantial number of members of low-income households speak a language other than English; and

"(F) shall utilize State agency personnel who are employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728) modifying or superseding such standards relating to the establishment and maintenance of personnel standards on a merit basis to make all tentative and final determinations of eligibility and ineligibility.

"(3) REGULATIONS.—

"(A) Except as provided in subparagraph (B), the Secretary shall issue such regulations consistent with this section as the Secretary deems necessary or appropriate for the effective and efficient administration of the Energy Refund Program, and shall promulgate all such regulations in accordance with the procedures set forth in section 553 of title 5, United States Code.

"(B) Without regard to section 553 of title 5 of such Code, the Secretary may, during the period beginning with the effective date of this

section and ending 2 years after such date, by rule promulgate as final any procedures that are substantially the same as the procedures governing the Supplemental Nutrition Assistance Program in section 273.2, 273.12, or 273.15 of title 7, Code of Federal Regulations.

"(C) Notwithstanding subsection (i)(4), the Secretary may promulgate regulations allowing for streamlined eligibility determinations for some or all households which include individuals receiving assistance under a State plan approved under title XIX or XXI of this Act. The regulations may institute procedures whereby the income and family size information used for determining eligibility under such title XIX or XXI may be the basis for determining eligibility for the Energy Refund Program.

"(D) Notwithstanding any other provision of this section, the Secretary may authorize States to provide benefits under this section on a quarterly basis if the Secretary determines that the amount of the benefits that would be provided on a monthly basis to households is insufficient to be efficiently paid on a monthly

basis in light of the administrative expenses of the Energy Refund Program.

"(g) TREATMENT.—The value of the refund provided under this section shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to an income tax, or public assistance programs (including, but not limited to, health care, cash aid, child care, nutrition programs, and housing assistance) and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of a refund under this section.

"(h) PROGRAM INTEGRITY.—For purposes of ensuring program integrity and complying with the requirements of the Improper Payment Information Act of 2002, the Secretary shall, to the maximum extent possible, rely on and coordinate with the quality control sample and review procedures of paragraphs (2), (3), (4), and (5) of section 16(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(c)).

"(i) DEFINITIONS.—

"(1) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services or the head of another agency designated by the Secretary of Health and Human Services.

"(2) ELECTRONIC BENEFIT TRANSFER SYSTEM.—The term 'electronic benefit transfer system' means a system by which household benefits or refunds defined under subsection (e) are issued from and stored in a central databank via electronic benefit transfer cards.

"(3) GROSS INCOME.—The term 'gross income' means the gross income of a household that is determined in accordance with standards and procedures established under section 5 of the Food and Nutrition Act of 2008 (7 U.S.C. 2014) and its implementing regulations.

"(4) HOUSEHOLD.—

"(A) The term 'household' means—

"(i) in subparagraphs (A) and (B) of subsection (c)(1) of this section, except as provided in subparagraph (C) of this paragraph, an individual or a group of individuals who are a household under section 3(n) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(n));

"(ii) in subsection (c)(1)(C) of this section, a single individual or married couple that receives benefits under section

1860D–14 of this Act (42 U.S.C. 1395w–114); and

"(iii) in subsection (c)(1)(D) of this section, a single individual or married couple that receives benefits under the supplemental security income program under title XVI of this Act (42 U.S.C. 1381–1383f).

"(B) The Secretary shall establish rules for providing the energy refund in an equitable and administratively simple manner to households where the group of individuals who live together includes members not all of whom are described in a single clause of subparagraph (A), or includes additional members not described in any such clause.

"(C) The Secretary shall establish rules regarding the eligibility and delivery of the energy refund to groups of individuals described in section 3(n)(4) or (5) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(n)).

"(5) POVERTY LINE.—The term 'poverty line' has the meaning given the term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section.

"(6) STATE.—The term 'State' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

"(7) STATE AGENCY.—The term 'State agency' means an agency of State government, including the local offices thereof, that has responsibility for administration of the 1 or more federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, the term shall include the counterpart local agencies administering such programs.

"(8) OTHER TERMS.—Other terms not defined in this title shall have the same meaning applied in the Supplemental Nutrition Assistance Program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) unless the Secretary finds for good cause that application of a particular definition would be detrimental to the purposes of the Energy Refund Program.".

SEC. 432. MODIFICATION OF EARNED INCOME CREDIT AMOUNT FOR INDIVIDUALS WITH NO QUALIFYING CHILDREN.

(a) INCREASE IN CREDIT PERCENTAGE AND PHASEOUT PERCENTAGE FOR INDIVIDUALS WITH NO CHILDREN.—The table contained in subparagraph (A) of section 32(b)(1) of the Internal Revenue Code of 1986 is amended by striking ''7.65'' each place it appears and inserting ''15.3''.

(b) INCREASE IN BEGINNING PHASEOUT AMOUNT.—

(1) IN GENERAL.—The table contained in subparagraph (A) of section 32(b)(2) of such Code is amended by striking ''$5,280'' and inserting ''$13,590''.

(2) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Subparagraph (B) of section 32(j)(1) of such Code is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) in the case of the $13,590 amount in subsection (b)(2)(A), by substituting 'calendar year 2011' for 'calendar year 1992' in subparagraph (B) thereof, and''.

(B) CONFORMING AMENDMENTS.—

(i) Clause (i) of section 32(j)(1)(B) of such Code is amended by inserting ''except as provided in clause (ii),'' before ''in the case of''.

(ii) Paragraph (1) of section 32(j) of such Code is amended by inserting ''(2012 in the case of the $13,590 amount in subsection (b)(2)(A))'' after ''1996''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

SEC. 433. PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS.

(a) OASDI TRUST FUNDS.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

''(o) The Secretary of the Treasury shall transfer from time to time to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, from amounts in the general fund of the Treasury that are not otherwise appropriated, such sums as the Chief Actuary of the Social Security Administration calculates as necessary (and so certifies to such Secretary) for any fiscal year, on account of changes in benefit costs and changes in tax revenue attributable to

the provisions of the American Clean Energy and Security Act of 2009 and the amendments made thereby, in order to place each of such Trust Funds in the same position at the end of such fiscal year as the position in which such Trust Fund would have been if such changes had not occurred.''.

(b) HI TRUST FUND.—Section 1817 of such Act (42 U.S.C. 1395i) is amended by adding at the end the following new subsection:

''(l) TRANSFERS TO ACCOUNT FOR CHANGES IN BENEFIT COSTS AND CHANGES IN TAX REVENUE ATTRIBUTABLE TO THE AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009.—The Secretary of the Treasury shall transfer from time to time to the Trust Fund, from amounts in the general fund of the Treasury that are not otherwise appropriated, such sums as the Chief Actuary of the Centers for Medicare & Medicaid Services calculates as necessary (and so certifies to such Secretary) for any fiscal year, on account of changes in benefit costs and changes in tax revenue attributable to the provisions of the American Clean Energy and Security Act of 2009 and the amendments made thereby, in order to place the Trust Fund in the same position at the end of such fiscal year as the position in which it would have been if such changes had not occurred.''.

Subtitle D—Exporting Clean Technology

SEC. 441. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Protecting Americans from the impacts of climate change requires global reductions in greenhouse gas emissions.

(2) Although developing countries are historically least responsible for the cumulative greenhouse gas emissions that are causing climate change and continue to have very low per capita greenhouse gas emissions, their overall greenhouse gas emissions are increasing as they seek to grow their economies and reduce energy poverty for their populations.

(3) Many developing countries lack the financial and technical resources to adopt clean energy technologies and absent assistance their greenhouse gas emissions will continue to increase.

(4) Investments in clean energy technology cooperation can substantially reduce global greenhouse gas emissions while providing developing countries with incentives to adopt policies that will address competitiveness concerns related to regulation of United States greenhouse gas emissions.

(5) Investments in clean technology in developing countries will increase demand for clean energy products, open up new markets for United States companies, spur innovation, and lower costs.

(6) Under Article 4 of the United Nations Framework Convention on Climate Change, developed country parties, including the United States, committed to ''take all practicable steps to promote, facilitate, and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other parties, particularly developing country parties, to enable them to implement the provisions of the Convention''.

(7) Under the Bali Action Plan, developed country parties to the United Nations Framework Convention on Climate Change, including the United States, committed to ''enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation,'' including, inter alia, consideration of ''improved access to adequate, predictable, and sustainable financial resources and financial and technical support, and the provision of new and additional resources, including official and concessional funding for developing country parties''.

(8) Intellectual property rights are a key driver of investment and research and development in, and the global deployment of, clean technologies.

(9) Innovative clean technologies, including U.S. and multilateral financing mechanisms for their deployment, are critical to mitigating global warming pollution, preventing catastrophic changes to the climate, and developing robust economies around the world.

(10) Any weakening of intellectual property rights protection poses a substantial competitive risk to U.S. companies and the creation of high-quality U.S. jobs, inhibiting the creation of new ''green'' employment and the transformational shift to the ''Green Economy'' of the 21st Century.

(11) Any U.S. funding directed toward assisting developing countries with regard to exporting clean technology should promote the robust compliance with and enforcement of existing international legal requirements for the protection of intellectual property rights as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C.3511(d)(15)

and in applicable intellectual property provisions of bilateral trade agreements.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to provide United States assistance and leverage private resources to encourage widespread implementation, in developing countries, of activities that reduce, sequester, or avoid greenhouse gas emissions; and

(2) to provide such assistance in a manner that—

(A) encourages such countries to adopt policies and measures, including sector-based and cross-sector policies and measures, that substantially reduce, sequester, or avoid greenhouse gas emissions;

(B) promotes the successful negotiation of a global agreement to reduce greenhouse gas emissions under the United Nations Framework Convention on Climate Change; and

(C) promotes robust compliance with and enforcement of existing international legal requirements for the protection of intellectual property rights, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of

the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)) and in applicable intellectual property provisions of bilateral trade agreements.

SEC. 442. DEFINITIONS.

In this subtitle:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committees on Energy and Commerce, Foreign Affairs, and Financial Services of the House of Representatives; and

(B) the Committees on Environment and Public Works, Energy and Natural Resources, and Foreign Relations of the Senate.

(3) CONVENTION.—The term ''Convention'' means the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992, and entered into force on March 21, 1994.

(4) DEVELOPING COUNTRY.—The term ''developing country'' means a country eligible to receive official development assistance according to the in-

come guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(5) ELIGIBLE COUNTRY.—The term ''eligible country'' means a developing country that is determined by the interagency group under section 444 to be eligible to receive assistance from the International Clean Technology Account.

(6) INTERAGENCY GROUP.—The term ''interagency group'' means the group established by the President under section 443 to administer distributions from the International Clean Technology Account.

(7) INTERNATIONAL CLEAN TECHNOLOGY ACCOUNT.—The term ''International Clean Technology Account'' means the account to which the Administrator allocates allowances under section 782(o) of the Clean Air Act.

(8) LEAST DEVELOPED COUNTRY.—The term ''least developed country'' means a foreign country the United Nations has identified as among the least developed of developing countries.

(9) QUALIFYING ACTIVITY.—The term ''qualifying activity'' means an activity that meets the criteria in section 445.

(10) QUALIFYING ENTITY.—The term ''qualifying entity'' means a national, regional, or local government in, or a nongovernmental organization or private entity located or operating in, an eligible country.

SEC. 443. GOVERNANCE.

(a) OVERSIGHT.—The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the interagency group established under subsection (b), shall oversee distributions of allowances from the International Clean Technology Account.

(b) INTERAGENCY GROUP.—The President shall establish an interagency group to administer the International Clean Technology Account. The Members of the interagency group shall include—

(1) the Secretary of State;

(2) the Administrator of the Environmental Protection Agency;

(3) the Secretary of Energy;

(4) the Secretary of the Treasury;

(5) the Secretary of Commerce;

(6) the Administrator of the United States Agency for International Development; and

(7) any other head of a Federal agency or executive branch appointee that the President may designate.

(c) CHAIRPERSON.—The Secretary of State shall serve as the chairperson of the interagency group.

(d) SUPPLEMENT NOT SUPPLANT.—Allowances distributed from the International Clean Technology Account shall be used to supplement, and not to supplant, any other Federal, State, or local resources available to carry out activities that are qualifying activities under this subtitle.

SEC. 444. DETERMINATION OF ELIGIBLE COUNTRIES.

(a) IN GENERAL.—The interagency group shall determine a country to be an eligible country for the purposes of this subtitle if a country meets the following criteria:

(1) The country is a developing country that—

(A) has entered into an international agreement to which the United States is a party, under which such country agrees to take actions to produce measurable, reportable, and verifiable greenhouse gas emissions mitigation; or

(B) is determined by the interagency group to have in force national policies and measures

that are capable of producing measurable, reportable, and verifiable greenhouse gas emissions mitigation.

(2) The country has developed a nationally appropriate mitigation strategy that seeks to achieve substantial reductions, sequestration, or avoidance of greenhouse gas emissions, relative to business-as-usual levels.

(3) Subject to subsection (b)(1), such other criteria as the President determines will serve the purposes of this subtitle or other United States national security, foreign policy, environmental, or economic objectives including robust compliance with and enforcement of existing international legal requirements for the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)) and in applicable intellectual property provisions of bilateral trade agreements.

(b) EXCEPTIONS.—

(1) Subsection (a)(3) applies only to bilateral assistance under section 446(c)(4).

(2) The eligibility criteria in this section do not apply in the case of least developed countries receiving assistance under section 445(7) for the purpose of building capacity to meet such eligibility criteria.

SEC. 445. QUALIFYING ACTIVITIES.

Assistance under this subtitle may be provided only to qualifying entities for clean technology activities (including building relevant technical and institutional capacity) that contribute to substantial, measurable, reportable, and verifiable reductions, sequestration, or avoidance of greenhouse gas emissions including—

(1) deployment of technologies to capture and sequester carbon dioxide emissions from electric generating units or large industrial sources (except that assistance under this subtitle for such deployment shall be limited to the cost of retrofitting existing facilities with such technologies or the incremental cost of purchasing and installing such technologies at new facilities);

(2) deployment of renewable electricity generation from wind, solar, sustainably produced biomass, geothermal, marine, or hydrokinetic sources;

(3) substantial increases in the efficiency of electricity transmission, distribution, and consumption;

(4) deployment of low- or zero emissions technologies that are facing financial or other barriers to their widespread deployment which could be addressed through support under this subtitle in order to reduce, sequester, or avoid emission;

(5) reduction in transportation sector emissions through increased transportation system and vehicle efficiency or use of transportation fuels that have lifecycle greenhouse gas emissions that are substantially lower than those attributable to fossil fuel-based alternatives;

(6) reduction in black carbon emissions; or

(7) capacity building activities, including—

(A) developing and implementing methodologies and programs for measuring and quantifying greenhouse gas emissions and verifying emissions mitigation;

(B) assessing, developing, and implementing technology and policy options for greenhouse gas emissions mitigation and avoidance of future emissions, including sector and cross-sector mitigation strategies; and

(C) providing other forms of technical assistance to facilitate the qualification for, and receipt of, assistance under this Act.

SEC. 446. ASSISTANCE.

(a) IN GENERAL.—The Secretary of State, or such other Federal agency head as the President may designate, is authorized to provide assistance, through the distribution of allowances, from the International Clean Technology Account for qualifying activities that take place in eligible countries.

(b) ANNUAL REPORTS.—Not later than March 1, 2012, and annually thereafter, the President shall submit to the appropriate congressional committees a report on the assistance provided under this subtitle during the prior fiscal year. Such report shall include—

(1) a description of the amount and value of allowances distributed during the prior fiscal year;

(2) a description of each activity that received assistance during the prior fiscal year, and a description of the anticipated and actual outcomes;

(3) an assessment of any adverse effects to human health, safety, or welfare, the environment, or natural resources as a result of activities supported under this subtitle;

(4) an assessment of the success of the assistance provided under this subtitle to improving the technical and institutional capacity to implement substantial emissions reductions;

(5) an estimate of the greenhouse gas emissions reductions, sequestration, or avoidance achieved by assistance provided under this subtitle during the prior fiscal year; and

(6) an assessment whether any funds expended for the benefit of any qualifying activity undermined the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)) and applicable intellectual property provisions of bilateral trade agreements.

(c) DISTRIBUTION OF ALLOWANCES.—

(1) IN GENERAL.—The Secretary of State, or such other Federal agency head as the President may designate, after consultation with the interagency group, shall distribute allowances from the International Clean Technology Account—

(A) in the form of bilateral assistance in accordance with paragraph (4);

(B) to multilateral funds or institutions pursuant to the Convention or an agreement negotiated under the Convention; or

(C) through some combination of the mechanisms identified in subparagraphs (A) and (B).

(2) GLOBAL ENVIRONMENT FACILITY.—For any allowances provided to the Global Environment Facility pursuant to paragraph (1)(B), the President shall designate the Secretary of the Treasury to distribute those allowances to the Global Environment Facility.

(3) DISTRIBUTION THROUGH INTERNATIONAL FUND OR INSTITUTION.—If allowances are distributed to a multilateral fund or institution, as authorized in paragraph (1), the Secretary of State, or such other Federal agency head as the President may designate, shall seek to ensure the establishment and implementation of adequate mechanisms to—

(A) apply and enforce the criteria for determination of eligible countries and qualifying activities under sections 444 and 445, respectively;

(B) require public reporting describing the process and methodology for selecting the ultimate recipients of assistance and a description of each activity that received assistance, includ-

ing the amount of obligations and expenditures for assistance; and

(C) require that no funds be expended for the benefit of any qualifying activity where that activity or any activity relating to a qualifying activity under section 445 undermines the robust compliance with and enforcement of existing legal requirements for the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

(4) BILATERAL ASSISTANCE.—

(A) IN GENERAL.—Bilateral assistance under paragraph (1) shall be carried out by the Administrator of the United States Agency for International Development, in consultation with the interagency group.

(B) LIMITATIONS.—Not more than 15 percent of allowances made available to carry out bilateral assistance under this subtitle in any year shall be distributed to support activities in any single country.

(C) SELECTION CRITERIA.—Not later than 2 years after the date of enactment of this subtitle, the Administrator of the United States Agency for International Development, after consultation with the interagency group, shall develop and publish a set of criteria to be used in evaluating activities within eligible countries for bilateral assistance under this subtitle.

(D) CRITERIA REQUIREMENTS.—The criteria under subparagraph (C) shall require that—

(i) the activity is a qualifying activity;

(ii) the activity will be conducted as part of an eligible country's nationally appropriate mitigation strategy or as part of an eligible country's actions towards providing a nationally appropriate mitigation strategy to reduce, sequester, or avoid emissions being implemented by the eligible country;

(iii) the activity will not have adverse effects on human health, safety, or welfare, the environment, or natural resources;

(iv) any technologies deployed through bilateral assistance under this subtitle will be properly implemented and maintained;

(v) the activity will not cause any net loss of United States jobs or displacement of United States production;

(vi) costs of the activity will be shared by the host country government, private sector parties, or a multinational development bank, except that this clause does not apply to least developed countries;

(vii) the activity would not undermine the protection of intellectual property rights for clean technology, as formulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights, referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)) and applicable intellectual property provisions of bilateral trade agreements; and

(viii) the activity meets such other requirements as the interagency group determines appropriate to further the purposes of this subtitle.

(E) CRITERIA PREFERENCES.—The criteria under subparagraph (C) shall give preference to activities that—

(i) promise to achieve large-scale greenhouse gas reductions, sequestration, or avoidance at a national, sectoral or cross-sectoral level;

(ii) have the potential to catalyze a shift within the host country towards widespread deployment of low- or zero-carbon energy technologies;

(iii) build technical and institutional capacity and other activities that are unlikely to be attractive to private sector funding; or

(iv) maximize opportunities to leverage other sources of assistance and catalyze private-sector investment.

(d) MONITORING, EVALUATION, AND ENFORCEMENT.—The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the interagency group, shall establish and implement a system to monitor and evaluate the performance of activities receiving assistance under this subtitle. The Secretary of State, or such other Federal agency head as

the President may designate, shall have the authority to suspend or terminate assistance in whole or in part for an activity if it is determined that the activity is not operating in compliance with the approved proposal.

(e) COORDINATION WITH U.S. FOREIGN ASSISTANCE.—Subject to the direction of the President, the Secretary of State shall, to the extent practicable, seek to align activities under this section with broader development, poverty alleviation, or natural resource management objectives and initiatives in the recipient country.

(f) DEFINITION.—For the purposes of this section the term ''clean technology'' means any technology or service related to the qualifying activities identified in section 445.

Subtitle E—Adapting to Climate Change

PART 1—DOMESTIC ADAPTATION

Subpart A—National Climate Change Adaptation Program

SEC. 451. GLOBAL CHANGE RESEARCH AND DATA MANAGEMENT.

(a) SHORT TITLE.—This section may be cited as the ''Global Change Research and Data Management Act of 2009''.

(b) GLOBAL CHANGE RESEARCH.—

(1) PURPOSE.—The purpose of this subsection is to provide for the continuation and coordination of a comprehensive and integrated United States observation, research, and outreach program which will assist the Nation and the world to understand, assess, predict, and respond to the effects of human-induced and natural processes of global change.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''global change'' means human-induced or natural changes in the global environment (including alterations in climate, land productivity, oceans or other water resources, atmospheric chemistry, biodiversity, and ecological systems) that may alter the capacity of the Earth to sustain life;

(B) the term ''global change research'' means study, monitoring, assessment, prediction, and information management activities to describe and understand—

(i) the interactive physical, chemical, and biological processes that regulate the total Earth system;

(ii) the unique environment that the Earth provides for life;

(iii) changes that are occurring in the Earth system; and

(iv) the manner in which such system, environment, and changes are influenced by human actions;

(C) the term ''interagency committee'' means the interagency committee established under paragraph (3);

(D) the term ''Plan'' means the National Global Change Research and Assessment Plan developed under paragraph (5);

(E) the term ''Program'' means the United States Global Change Research Program established under paragraph (4); and

(F) the term ''regional climate change'' means the natural or human-induced changes manifested in the local or regional environment (including alterations in weather patterns, land productivity, water resources, sea level rise, atmospheric chemistry, biodiversity, and ecological systems) that may alter the capacity of a specific region to support current or future social and economic activity or natural ecosystems.

(3) INTERAGENCY COOPERATION AND COORDINATION.—

(A) ESTABLISHMENT.—The President shall establish or designate an interagency committee to ensure cooperation and coordination of all Federal research activities pertaining to processes of global change for the purpose of increasing the overall effectiveness and productivity of Federal global change research efforts. The interagency committee shall include research and program representatives of agencies conducting global change research, agencies with authority over resources likely to be affected by global change, and agencies with authority to mitigate human-induced global change.

(B) FUNCTIONS OF THE INTERAGENCY COMMITTEE.—The interagency committee shall—

(i) serve as the forum for developing the Plan and for overseeing its implementation;

(ii) serve as the forum for developing the vulnerability assessment under paragraph (7);

(iii) ensure cooperation among Federal agencies with respect to global change research activities;

(iv) work with academic, State, industry, and other groups conducting global change research, to provide for periodic public and peer review of the Program;

(v) cooperate with the Secretary of State in—

(I) providing representation at international meetings and conferences on global change research in which the United States participates; and

(II) coordinating the Federal activities of the United States with programs of other nations and with international global change research activities;

(vi) work with appropriate Federal, State, regional, and local authorities to ensure that the Program is designed to produce information needed to develop policies to mitigate human-induced global change and to reduce the vulnerability of

the United States and other regions to global change;

(vii) facilitate ongoing dialog and information exchange with regional, State, and local governments and other user communities; and

(viii) identify additional decision-making groups that may use information generated through the Program.

(4) UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM.—

(A) ESTABLISHMENT.—The President shall establish an interagency United States Global Change Research Program to improve understanding of global change, to respond to the information needs of communities and decisionmakers, and to provide periodic assessments of the vulnerability of the United States and other regions to global and regional climate change. The Program shall be implemented in accordance with the Plan.

(B) LEAD AGENCY.—The lead agency for the United States Global Change Research Program shall be the Office of Science and Technology Policy.

(C) INTERAGENCY PROGRAM ACTIVITIES.—The Director of the Office of Science and Technology Policy, in consultation with the interagency committee, shall identify activities included in the Plan that involve participation by 2 or more agencies in the Program, and that do not fall within the current fiscal year budget allocations of those participating agencies, to fulfill the requirements of this section. The Director of the Office of Science and Technology Policy shall allocate funds to the agencies to conduct the identified interagency activities. Such activities may include—

(i) development of scenarios for climate, land-cover change, population growth, and socioeconomic development;

(ii) calibration and testing of alternative regional and global climate models;

(iii) identification of economic sectors and regional climatic zones; and

(iv) convening regional workshops to facilitate information exchange and involvement of regional, State, and local decisionmakers, non-Federal experts, and

other stakeholder groups in the activities of the Program.

(D) WORKSHOPS.—The Director shall ensure that at least one workshop is held per year in each region identified by the Plan under paragraph (5)(B)(xi) to facilitate information exchange and outreach to regional, State, and local stakeholders as required by this section.

(E) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Science and Technology Policy for carrying out this paragraph $10,000,000 for each of the fiscal years 2009 through 2014.

(5) NATIONAL GLOBAL CHANGE RESEARCH AND ASSESSMENT PLAN.—

(A) IN GENERAL.—The President shall develop a National Global Change Research and Assessment Plan for implementation of the Program. The Plan shall contain recommendations for global change research and assessment. The President shall submit an outline for the development of the Plan to the Congress within 1 year after the date of enactment of this Act, and shall submit a completed Plan to the Con-

gress within 3 years after the date of enactment of this Act. Revised Plans shall be submitted to the Congress at least once every 5 years thereafter. In the development of each Plan, the President shall conduct a formal assessment process under this paragraph to determine the needs of appropriate Federal, State, regional, and local authorities and other interested parties regarding the types of information needed by them in developing policies to mitigate human-induced global change and to reduce society's vulnerability to global change and shall utilize these assessments, including the reviews by the National Academy of Sciences and the National Governors Association under subparagraphs (E) and (F), in developing the Plan.

(B) CONTENTS OF THE PLAN.—The Plan shall—

(i) establish, for the 10-year period beginning in the year the Plan is submitted, the goals and priorities for Federal global change research which most effectively advance scientific understanding of global change and provide information of use to Federal, State, regional, and local

authorities in the development of policies relating to global change;

(ii) describe specific activities, including efforts to determine user information needs, research activities, data collection, database development, and data analysis requirements, development of regional scenarios, assessment of model predictability, assessment of climate change impacts, participation in international research efforts, and information management, required to achieve such goals and priorities;

(iii) identify relevant programs and activities of the Federal agencies that contribute to the Program directly and indirectly;

(iv) set forth the role of each Federal agency in implementing the Plan;

(v) consider and utilize, as appropriate, reports and studies conducted by Federal agencies, the National Research Council, or other entities;

(vi) make recommendations for the coordination of the global change research and assessment activities of the United

States with such activities of other nations and international organizations, including—

(I) a description of the extent and nature of international cooperative activities;

(II) bilateral and multilateral efforts to provide worldwide access to scientific data and information; and

(III) improving participation by developing nations in international global change research and environmental data collection;

(vii) detail budget requirements for Federal global change research and assessment activities to be conducted under the Plan;

(viii) catalog the type of information identified by appropriate Federal, State, regional, and local decisionmakers needed to develop policies to reduce society's vulnerability to global change and indicate how the planned research will meet these decisionmakers' information needs;

(ix) identify the observing systems currently employed in collecting data relevant to global and regional climate change research and prioritize additional observation systems that may be needed to ensure adequate data collection and monitoring of global change;

(x) describe specific activities designed to facilitate outreach and data and information exchange with regional, State, and local governments and other user communities; and

(xi) identify and describe regions of the United States that are likely to experience similar impacts of global change or are likely to share similar vulnerabilities to global change.

(C) RESEARCH ELEMENTS.—The Plan shall include at a minimum the following research elements:

(i) Global measurements, establishing worldwide to regional scale observations prioritized to understand global change and to meet the information needs of deci-

sionmakers on all relevant spatial and time scales.

(ii) Information on economic, demographic, and technological trends that contribute to changes in the Earth system and that influence society's vulnerability to global and regional climate change.

(iii) Development of indicators and baseline databases to document global change, including changes in species distribution and behavior, extent of glaciations, and changes in sea level.

(iv) Studies of historical changes in the Earth system, using evidence from the geological and fossil record.

(v) Assessments of predictability using quantitative models of the Earth system to simulate global and regional environmental processes and trends.

(vi) Focused research initiatives to understand the nature of and interaction among physical, chemical, biological, land use, and social processes related to global and regional climate change.

(vii) Focused research initiatives to determine and then meet the information needs of appropriate Federal, State, and regional decisionmakers.

(D) INFORMATION MANAGEMENT.—The Plan shall incorporate, to the extent practicable, the recommendations relating to data acquisition, management, integration, and archiving made by the interagency climate and other global change data management working group established under subsection (c)(3).

(E) NATIONAL ACADEMY OF SCIENCES EVALUATION.—The President shall enter into an agreement with the National Academy of Sciences under which the Academy shall—

(i) evaluate the scientific content of the Plan; and

(ii) recommend priorities for future global and regional climate change research and assessment.

(F) NATIONAL GOVERNORS ASSOCIATION EVALUATION.—The President shall enter into an agreement with the National Governors Association Center for Best Practices under which that Center shall—

(i) evaluate the utility to State, local, and regional decisionmakers of each Plan and of the anticipated and actual information outputs of the Program for development of State, local, and regional policies to reduce vulnerability to global change; and

(ii) recommend priorities for future global and regional climate change research and assessment.

(G) PUBLIC PARTICIPATION.—In developing the Plan, the President shall consult with representatives of academic, State, industry, and environmental groups. Not later than 90 days before the President submits the Plan, or any revision thereof, to the Congress, a summary of the proposed Plan shall be published in the Federal Register for a public comment period of not less than 60 days.

(6) BUDGET COORDINATION.—

(A) IN GENERAL.—The President shall provide general guidance to each Federal agency participating in the Program with respect to the preparation of requests for appropriations for activities related to the Program.

(B) CONSIDERATION IN PRESIDENT'S BUDGET.—The President shall submit, at the time of his annual budget request to Congress, a description of those items in each agency's annual budget which are elements of the Program.

(7) VULNERABILITY ASSESSMENT.—

(A) REQUIREMENT.—Within 1 year after the date of enactment of this Act, and at least once every 5 years thereafter, the President shall submit to the Congress an assessment which—

(i) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings;

(ii) analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years;

(iii) based on indicators and baselines developed under paragraph (5)(C)(iii), as well as other measurements, analyzes changes to the natural environment, land

and water resources, and biological diversity in—

(I) major geographic regions of the United States; and

(II) other continents;

(iv) analyzes the effects of global change, including the changes described in clause (iii), on food and fiber production, energy production and use, transportation, human health and welfare, water availability and coastal infrastructure, and human social and economic systems, including providing information about the differential impacts on specific geographic regions within the United States, on people of different income levels within those regions, and for rural and urban areas within those regions; and

(v) summarizes the vulnerability of different geographic regions of the world to global change and analyzes the implications of global change for the United States, including international assistance, population displacement, food and resource availability, and national security.

(B) USE OF RELATED REPORTS.—To the extent appropriate, the assessment produced pursuant to this paragraph may coordinate with, consider, incorporate, or otherwise make use of related reports, assessments, or information produced by the United States Global Change Research Program, regional, State, and local entities, and international organizations, including the World Meteorological Organization and the Intergovernmental Panel on Climate Change.

(8) POLICY ASSESSMENT.—Not later than 1 year after the date of enactment of this Act, and at least once every 4 years thereafter, the President shall enter into a joint agreement with the National Academy of Public Administration and the National Academy of Sciences under which the Academies shall—

(A) document current policy options being implemented by Federal, State, and local governments to mitigate or adapt to the effects of global and regional climate change;

(B) evaluate the realized and anticipated effectiveness of those current policy options in meeting mitigation and adaptation goals;

(C) identify and evaluate a range of additional policy options and infrastructure for mitigating or adapting to the effects of global and regional climate change;

(D) analyze the adoption rates of policies and technologies available to reduce the vulnerability of society to global change with an evaluation of the market and policy obstacles to their adoption in the United States; and

(E) evaluate the distribution of economic costs and benefits of these policy options across different United States economic sectors.

(9) ANNUAL REPORT.—Each year at the time of submission to the Congress of the President's budget request, the President shall submit to the Congress a report on the activities conducted pursuant to this subsection, including—

(A) a description of the activities of the Program during the past fiscal year;

(B) a description of the activities planned in the next fiscal year toward achieving the goals of the Plan; and

(C) a description of the groups or categories of State, local, and regional decision-makers identified as potential users of the in-

formation generated through the Program and a description of the activities used to facilitate consultations with and outreach to these groups, coordinated through the work of the interagency committee.

(10) RELATION TO OTHER AUTHORITIES.—The President shall—

(A) ensure that relevant research, assessment, and outreach activities of the National Climate Program, established by the National Climate Program Act (15 U.S.C. 2901 et seq.), are considered in developing national global and regional climate change research and assessment efforts; and

(B) facilitate ongoing dialog and information exchange with regional, State, and local governments and other user communities through programs authorized in the National Climate Program Act (15 U.S.C. 2901 et seq.).

(11) REPEAL.—The Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.) is amended by striking titles I and III thereof.

(12) GLOBAL CHANGE RESEARCH INFORMATION.—The President shall establish or designate a Global Change Research Information Exchange to

make scientific research and other information produced through or utilized by the Program which would be useful in preventing, mitigating, or adapting to the effects of global change accessible through electronic means.

(13) ICE SHEET STUDY AND REPORT.—

(A) STUDY.—

(i) REQUIREMENT.—The Director of the National Science Foundation and the Administrator of National Oceanic and Atmospheric Administration shall enter into an arrangement with the National Academy of Sciences to complete a study of the current status of ice sheet melt, as caused by climate change, with implications for global sea level rise.

(ii) CONTENTS.—The study shall take into consideration—

(I) the past research completed related to ice sheet melt as reviewed by Working Group I of the Intergovernmental Panel on Climate Change;

(II) additional research completed since the fall of 2005 that was

not included in the Working Group I report due to time constraints; and

(III) the need for an accurate assessment of changes in ice sheet spreading, changes in ice sheet flow, self-lubrication, the corresponding effect on ice sheets, and current modeling capabilities.

(B) REPORT.—Not later than 18 months after the date of enactment of this Act, the National Academy of Sciences shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the key findings of the study conducted under subparagraph (A), along with recommendations for additional research related to ice sheet melt and corresponding sea level rise.

(14) HURRICANE FREQUENCY AND INTENSITY STUDY AND REPORT.—

(A) STUDY.—

(i) REQUIREMENT.—The Administrator of the National Oceanic and Atmospheric Administration and the Director of

the National Science Foundation shall enter into an arrangement with the National Academy of Sciences to complete a study of the current state of the science on the potential impacts of climate change on patterns of hurricane and typhoon development, including storm intensity, track, and frequency, and the implications for hurricane-prone and typhoon-prone coastal regions.

(ii) CONTENTS.—The study shall take into consideration—

(I) the past research completed related to hurricane and typhoon development, track, and intensity as reviewed by Working Groups I and II of the Intergovernmental Panel on Climate Change;

(II) additional research completed since the fall of 2005 that was not included in the Working Group I and II reports due to time constraints;

(III) the need for accurate assessment of potential changes in hur-

ricane and typhoon intensity, track, and frequency and of the current modeling and forecasting capabilities and the need for improvements in forecasting of these parameters; and

(IV) the need for additional research and monitoring to improve forecasting of hurricanes and typhoons and to understand the relationship between climate change and hurricane and typhoon development.

(B) REPORT.—Not later than 18 months after the date of enactment of this Act, the National Academy of Sciences shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the key findings of the study conducted under subparagraph (A).

(c) CLIMATE AND OTHER GLOBAL CHANGE DATA MANAGEMENT.—

(1) PURPOSES.—The purposes of this subsection are to establish climate and other global change data management and archiving as Federal

agency missions, and to establish Federal policies for managing and archiving climate and other global change data.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''metadata'' means information describing the content, quality, condition, and other characteristics of climate and other global change data, compiled, to the maximum extent possible, consistent with the requirements of the ''Content Standard for Digital Geospatial Metadata'' (FGDC–STD–001–1998) issued by the Federal Geographic Data Committee, or any successor standard approved by the working group; and

(B) the term ''working group'' means the interagency climate and other global change data management working group established under paragraph (3).

(3) INTERAGENCY CLIMATE AND OTHER GLOBAL CHANGE DATA MANAGEMENT WORKING GROUP.—

(A) ESTABLISHMENT.—The President shall establish or designate an interagency climate and other global change data management working group to make recommendations for

coordinating Federal climate and other global change data management and archiving activities.

(B) MEMBERSHIP.—The working group shall include the Administrator of the National Aeronautics and Space Administration, the Administrator of the National Oceanic and Atmospheric Administration, the Secretary of Energy, the Secretary of Defense, the Director of the National Science Foundation, the Director of the United States Geological Survey, the Archivist of the United States, the Administrator of the Environmental Protection Agency, the Secretary of the Smithsonian Institution, or their designees, and representatives of any other Federal agencies the President considers appropriate.

(C) REPORTS.—Not later than 1 year after the date of enactment of this Act, the working group shall transmit a report to the Congress containing the elements described in subparagraph (D). Not later than 4 years after the initial report under this subparagraph, and at least once every 4 years thereafter, the working group shall transmit reports updating the pre-

vious report. In preparing reports under this subparagraph, the working group shall consult with expected users of the data collected and archived by the Program.

(D) CONTENTS.—The reports and updates required under subparagraph (C) shall—

(i) include recommendations for the establishment, maintenance, and accessibility of a catalog identifying all available climate and other global change data sets;

(ii) identify climate and other global change data collections in danger of being lost and recommend actions to prevent such loss;

(iii) identify gaps in climate and other global change data and recommend actions to fill those gaps;

(iv) identify effective and compatible procedures for climate and other global change data collection, management, and retention and make recommendations for ensuring their use by Federal agencies and other appropriate entities;

(v) develop and propose a coordinated strategy for funding and allocating respon-

sibilities among Federal agencies for climate and other global change data collection, management, and retention;

(vi) make recommendations for ensuring that particular attention is paid to the collection, management, and archiving of metadata;

(vii) make recommendations for ensuring a unified and coordinated Federal capital investment strategy with respect to climate and other global change data collection, management, and archiving;

(viii) evaluate the data record from each observing system and make recommendations to ensure that delivered data are free from time-dependent biases and random errors before they are transferred to long-term archives; and

(ix) evaluate optimal design of observation system components to ensure a cost-effective, adequate set of observations detecting and tracking global change.

SEC. 452. NATIONAL CLIMATE SERVICE.

(a) SHORT TITLE.—This section may be cited as the ''National Climate Service Act of 2009''.

(b) PURPOSE.—The purpose of this section is to establish a National Climate Service and to define the activities to be undertaken within the National Oceanic and Atmospheric Administration to—

(1) advance understanding of climate variability and change at the global, national, regional, and local levels;

(2) provide forecasts, warnings, and other information to the public on variability and change in weather and climate that affect geographic areas, natural resources, infrastructure, economic sectors, and communities; and

(3) support development of adaptation and response plans by Federal agencies, State, local, and tribal governments, the private sector, and the public.

(c) DEFINITIONS.—In this section:

(1) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the Climate Service Advisory Committee established under subsection (f).

(2) DIRECTOR.—The term ''Director'' means the Director of the Climate Service Office.

(3) REPRESENTATIVE.—The term ''representative'' means an individual who is not a full-time or part-time employee of the Federal Government and

who is appointed to an advisory committee to represent the views of an entity or entities outside the Federal Government.

(4) SPECIAL GOVERNMENT EMPLOYEE.—The term ''Special Government Employee'' has the same meaning as in section 202(a) of title 18, United States Code.

(5) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Commerce for Oceans and Atmosphere.

(d) INTERAGENCY DEVELOPMENT OF A NATIONAL CLIMATE SERVICE.—

(1) IN GENERAL.—The President shall—

(A) initiate a process within 30 days after the date of enactment of this Act through the Committee on Environment and Natural Resources of the National Science and Technology Council and led by the Director of the Office of Science and Technology Policy, to evaluate alternative structures to support a collaborative, interagency research and operational program that will achieve the goal of meeting the needs of decisionmakers in—

(i) Federal agencies;

(ii) State, local, and tribal governments;

(iii) regional entities and other stakeholders and users,

for reliable, timely, and relevant information related to climate variability and change;

(B) within 1 year after the date of enactment of this Act complete pursuant to paragraph (2) a survey of the needs of current and future users of information related to climate variability and change;

(C) within 2 years after the date of enactment of this Act report to Congress under paragraph (3) the results of the evaluation described in subparagraph (A) and provide a plan to establish a collaborative, interagency research and operational program to deliver information related to climate variability and change to all users; and

(D) within 3 years after the date of enactment of this Act, and after delivery of the report to Congress required under subparagraph (C), establish a National Climate Service, based upon the information obtained through the

process described in subparagraph (A), that meets the goal described in subparagraph (A).

(2) SURVEY OF NEED FOR CLIMATE SERVICES.—

(A) IN GENERAL.—The Director of the Office of Science and Technology Policy, through the Committee on Environment and Natural Resources, shall provide a report to Congress within 1 year after the date of enactment of this Act that compiles information on the current climate products being delivered by each Federal agency and its partner organizations to users and stakeholders, and on the needs of users and stakeholders for new climate products and services.

(B) CONTENTS OF THE REPORT.—The report shall identify—

(i) specific user groups and stakeholders that currently are served by each Federal agency and its partner organizations;

(ii) the type of climate products and services currently delivered to specific users groups and stakeholders, and the specific Federal agency office, program, or

partner organization that delivers these products and services;

(iii) potential user groups and stakeholders that may be served by expanding climate products and services;

(iv) specific needs for new climate products and services to be delivered by each Federal agency and its partner organizations identified by user groups and stakeholders;

(v) a characterization of the different user and stakeholder groups that were surveyed by each Federal agency; and

(vi) a list of non-Federal entities that deliver climate products and services.

(3) REPORT TO CONGRESS.—

(A) IN GENERAL.—Within 2 years after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall report to the President and the Congress on a proposal, prepared through the Committee on Environment and Natural Resources, to establish and operate a National Climate Service. The report shall include—

(i) a description of the alternative structures considered;

(ii) a description of the structure proposed for a National Climate Service, including a discussion of the benefits of this structure as compared to the alternatives considered;

(iii) designation of a specific office or agency that will lead the National Climate Service and that shall be accountable for the daily operation of the National Climate Service;

(iv) a description of the role and capability of each Federal agency, including a list of all entities within each agency or supported with agency funds that currently provide or may provide climate products or services;

(v) a description of the mechanisms that will be used to ensure ongoing communication and information exchange among the Federal agencies and between Federal agencies and their respective user and stakeholder communities including—

(I) mechanisms to facilitate ongoing dialogue with non-Federal organizations providing climate services;

(II) mechanisms to facilitate ongoing dialogue with regional, State, local, and tribal governments, the private sector, and other users and stakeholders on the development and delivery of climate services;

(III) mechanisms to collect information, observations, and other data relevant for improving climate products and services; and

(IV) designation of points of contact for each Federal agency with responsibilities to deliver climate services;

(vi) a detailed description of the processes and procedures that will be necessary to coordinate observations and information collection by different Federal agencies to ensure the compatibility of information and to facilitate data and information exchange among Federal agencies and with non-Federal entities, and a designation of the

agency or agencies that would be responsible for ongoing oversight of these functions;

(vii) a detailed description of how research findings and climate impact assessments produced through the United States Global Change Research Program and the other activities undertaken within the United States Global Change Research Program would be integrated with the activities undertaken by a National Climate Service;

(viii) a list of the existing observation and monitoring systems or programs operated by each Federal agency that provide data, observations, and other information that may be used to develop or improve climate products and services;

(ix) a description of new infrastructure, equipment, personnel or other resources, by agency, that may be needed to achieve the goals of a National Climate Service, and the time period over which these new resources will be allocated;

(x) an identification of the activities that may be undertaken in cooperation with international partners;

(xi) the mechanisms established to provide quality assurance and quality control of climate service products and services, and the agency or agencies designated to conduct and oversee these mechanisms;

(xii) an identification of non-Federal entities that provide climate products and services, and a description of the relationship envisioned between a National Climate Service and the non-Federal entities providing climate services; and

(xiii) responses to the comments received during the public comment period.

(B) DRAFT REPORT.—Prior to the submission of the final report, the Director of the Office of Science and Technology Policy shall publish a draft report in the Federal Register with a comment period of at least 30 days.

(C) CONSULTATION.—In developing the report, the Director of the Office of Science and Technology Policy shall consult with State, local, and tribal governments, regional entities,

the private sector, and other users and stakeholder groups, and Congress.

(4) ANNUAL REPORT.—The Director of the Office of Science and Technology Policy shall transmit to the Congress at the time of the President's fiscal year 2013 budget request, and annually thereafter, a report on the annual anticipated cost of carrying out the research and operational activities of the National Climate Service, with a description of the budget for each Federal agency's activities.

(e) CLIMATE SERVICE PROGRAM.—

(1) IN GENERAL.—The Under Secretary, building upon the resources of the National Weather Service and other weather and climate programs in the National Oceanic and Atmospheric Administration, shall establish a Climate Service Program.

(2) CLIMATE SERVICE OFFICE.—The Under Secretary shall establish a Climate Service Office and shall appoint a Director of the Office to collaborate with the leadership of the National Oceanic and Atmospheric Administration line offices to perform the duties assigned to the Office. The Climate Service Office shall—

(A) coordinate programs at the National Oceanic and Atmospheric Administration to en-

sure the timely production and distribution of data and information on global, national, regional, and local climate variability and change over all time scales relevant for planning and response, including intraseasonal, interannual, decadal, and multidecadal time periods;

(B) ensure exchange of information between the research and operational offices at the National Oceanic and Atmospheric Administration to identify research needs for improving climate products and services and ensure the timely and orderly transition of research findings, improved technologies, models, and other tools to the National Oceanic and Atmospheric Administration's operations;

(C) ensure operational quality control of all Climate Service Program products including a transparent and open accounting of all the assumptions built into the global, national, regional, and local weather and climate computer models upon which such products are based;

(D) ensure a continuous level of high-quality data collected through a national observation and monitoring infrastructure, including at

a minimum performing regular maintenance and verification, and periodic upgrades;

(E) serve as liaison to and exchange information with other Federal agencies that provide climate services in order to—

(i) ensure the timely dissemination of data and information on weather and climate produced by the National Oceanic and Atmospheric Administration to other Federal agencies;

(ii) ensure that data and information collected by other Federal agencies relevant to improving climate services are made available to the National Oceanic and Atmospheric Administration;

(iii) facilitate the development and delivery of climate products and services to relevant stakeholders; and

(iv) obtain information from other Federal agencies to improve the development and dissemination by the National Oceanic and Atmospheric Administration of information on weather and climate to other Federal agencies for the development

of climate service products by those agencies;

(F) ensure cooperation and collaboration, as appropriate, of the Climate Service Program with State, local, and tribal governments, regional entities, academic and nonprofit research organizations, and private sector entities, including weather information providers and other stakeholders; and

(G) ensure exchange of data, information, and research with the United States Global Change Research Program to support the development of assessments required under the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.).

(3) CLIMATE SERVICE PROGRAM.—

(A) IN GENERAL.—The Under Secretary shall operate the Climate Service Program through a national center, the Climate Service Office, and a network of regional and local facilities, including the established regional and local offices of the National Weather Service, 6 Regional Climate Centers, the offices of the Regional Integrated Sciences and Assessments program, the National Integrated Drought In-

formation System, and any other National Oceanic and Atmospheric Administration or National Oceanic and Atmospheric Administration-supported regional and local entities, as appropriate.

(B) REGIONAL CLIMATE CENTERS PROGRAM.—The Under Secretary shall maintain a network of 6 Regional Climate Centers to work cooperatively with the State Climate Offices to—

(i) collect and exchange data and information needed to characterize, understand, and forecast regional and local weather and climate;

(ii) facilitate collection and exchange of data and information between the States and Federal Government on weather and climate in conjunction with the National Climatic Data Center;

(iii) support research and observations;

(iv) obtain input on stakeholder needs for weather and climate information and products; and

(v) support State and local adaptation and response planning.

(C) REGIONAL INTEGRATED SCIENCES AND ASSESSMENTS PROGRAM.—The Under Secretary shall maintain a network of offices as part of the Regional Integrated Sciences and Assessments Program. Such offices shall engage in cooperative research, development, and demonstration projects with the academic community, State Climate Offices, Regional Climate Offices, and other users and stakeholders on climate products, technologies, models, and other tools to improve understanding and forecasting of regional and local climate variability and change and the effects on economic activities, natural resources, and water availability, and other effects on communities, to facilitate development of regional and local adaptation plans to respond to climate variability and change, and any other needed research identified by the Under Secretary or the Advisory Committee.

(D) OTHER OFFICES.—In carrying out the functions of the Climate Service Program, the Under Secretary shall utilize the assets and expertise of—

(i) the National Weather Service to—

(I) deliver operational weather and climate forecasts, warnings, products, and information through the Climate Service Programs Division, Local Weather Forecast Offices, Weather Service Offices, and River Forecast Centers; and

(II) develop climate forecast models and tools through the National Centers for Environmental Prediction;

(ii) the National Environmental Satellite, Data, and Information Service to provide data services and support for product development and operations through the National Climatic Data Center and the Regional Climate Centers;

(iii) the Office of Oceanic and Atmospheric Research to—

(I) provide research on product development;

(II) improve weather and climate forecast models;

(III) provide new technologies and methods of observation; and

(IV) oversee the National Oceanic and Atmospheric Administration supported research performed by the Joint Cooperative Institutes, universities, and other non-Federal entities;

(iv) the National Integrated Drought Information System to—

(I) provide an effective drought warning system;

(II) coordinate and integrate Federal research on droughts;

(III) collect and integrate information on key indicators of drought;

(IV) make usable, reliable, and timely forecasts and assessments of drought, including assessments of the severity of drought conditions and effects;

(V) communicate drought forecasts, conditions, and effects to Federal, State, tribal, and local governments, regional entities, the private sector, and the public; and

(VI) coordinate with State Climate Offices and RISA teams to as-

sess management practices and technologies, and the effects of both, used for drought mitigation at the local, State, and regional levels; and

(v) any other National Oceanic and Atmospheric Administration offices or programs, as appropriate.

(E) MISSION.—The Under Secretary shall ensure that the core functions and missions of the National Weather Service, the National Integrated Drought Information System, and any other programs within the National Oceanic and Atmospheric Administration are not diminished or neglected by the establishment of the Climate Service Program or the duties imposed on such offices or programs under this paragraph.

(F) PROGRAM ELEMENTS.—The Climate Service Program shall—

(i) conduct analyses of and studies relating to the effects of weather and climate on communities, including effects on agricultural production, natural resources, energy supply and demand, recreation, and other sectors of the economy;

(ii) carry out observations, data collection, and monitoring of atmospheric and oceanic conditions on a statewide, regional, national, and global basis;

(iii) provide information and technical support for Federal, regional, State, tribal, and local government efforts to assess and respond to climate variability and change;

(iv) develop systems for the management and dissemination of data, information, and assessments, including mechanisms for consultation with current and potential users and other stakeholders;

(v) conduct research to improve forecasting, characterization, and understanding of weather and climate variability and change and its effects on communities, including its effects on agricultural production, natural resources, energy supply and demand, recreation, and other sectors of the economy; and

(vi) develop tools to facilitate the use of climate information by local and regional stakeholders.

(f) CLIMATE SERVICE ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Under Secretary shall establish a Climate Service Advisory Committee to provide advice on—

(A) climate service product development;

(B) delivery of services to decisionmakers and other stakeholders;

(C) infrastructure to support observations and monitoring;

(D) computation and modeling needs, research needs, and other resources needed to develop, distribute, and ensure the utility of climate data, products, and services; and

(E) any other topics as may be requested by the Under Secretary or Congress.

(2) MEMBERS.—

(A) IN GENERAL.—The Advisory Committee shall be composed of at least 25 members appointed by the Under Secretary. Each member of the Advisory Committee shall be qualified either—

(i) by education, training, and experience to evaluate scientific and technical information on matters referred to the Advisory Committee under this subsection; or

(ii) to evaluate the utility and need for climate products by planners, decision-makers, the private sector, and the public.

(B) TERMS OF SERVICE.—Members shall be appointed for 3-year terms, renewable once, and shall serve at the discretion of the Under Secretary. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy, and an individual so appointed may subsequently be appointed for 2 full 3-year terms if the remainder of the unexpired term is less than one year.

(C) CHAIRPERSON.—The Under Secretary shall designate a chairperson from among the members of the Advisory Committee. The designated Chairperson shall alternate between a member who is appointed as a representative and a member who is appointed as a Special Government Employee.

(D) SUBCOMMITTEES.—

(i) ESTABLISHMENT.—The Advisory Committee shall establish—

(I) a Subcommittee on Science and Technology to advise the Climate Service Program on needed research,

technology development, and additional observations, and on any other scientific or technical issues as appropriate; and

(II) a Subcommittee on Product Development and Delivery composed primarily of representatives of the community of potential users of the products developed and delivered by the Climate Service Program.

The Advisory Committee may establish such additional subcommittees of its members as may be necessary.

(ii) APPOINTMENT.—

(I) FULL ADVISORY COMMITTEE.—At least 50 percent of the members of the Advisory Committee shall be appointed as Special Government Employees.

(II) SUBCOMMITTEES.—At least 75 percent of the members of the Subcommittee on Science and Technology shall be appointed as Special Government Employees. Not more than 25 percent of the members of

the Subcommittee on Product Development and Delivery shall be appointed as Special Government Employees.

(3) ADMINISTRATIVE PROVISIONS.—

(A) REPORTING.—The Advisory Committee shall report to the Under Secretary and the appropriate requesting party.

(B) ADMINISTRATIVE SUPPORT.—The Under Secretary shall provide administrative support to the Advisory Committee.

(C) MEETINGS.—The Advisory Committee shall meet at least twice each year and at other times at the call of the Under Secretary or the Chairperson.

(D) COMPENSATION AND EXPENSES.—A member of the Advisory Committee shall not be compensated for service on the Advisory Committee, but may be allowed travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(4) EXPIRATION.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Climate Service Advisory Committee.

(g) REPEAL.—The National Climate Program Act (15 U.S.C. 2901 et seq.) is repealed.

(h) ESTABLISHMENT OF REGIONAL INTEGRATED SCIENCES AND ASSESSMENTS TEAMS.—

(1) IN GENERAL.—In maintaining the network of Regional Integrated Sciences and Assessments (RISA) Teams under subsection (e)(3)(C), the Under Secretary shall utilize a competitive, peer-reviewed selection process. Teams shall conduct applied regional climate research and projects to address the needs of local and regional decisionmakers for information and tools to develop adaptation and response plans to climate variability and change. The awards shall be administered through a cooperative agreement between the National Oceanic and Atmospheric Administration and the RISA Team. Each award shall be for a period of five years.

(2) RISA TEAMS.—Teams shall be composed of multi-institutional partnerships whose individual members may include—

(A) institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

(B) minority serving institutions, as defined in section 371(a) of the Higher Education Act of 1965; and

(C) nongovernmental research organizations, Federal agencies, State and local agencies, tribal organizations, and for-profit entities.

(3) CONSIDERATIONS.—In making awards under this subsection, the Under Secretary shall consider—

(A) the overall geographic distribution of RISA Teams and existing gaps in applied research to support local and regional decision-makers;

(B) the team's ability to contribute to the National Oceanic and Atmospheric Administration's efforts to deliver climate services in the region; and

(C) the team's proposal to integrate social and physical sciences research to address the effects of climate variability and change on the ecology, economy, infrastructure, and communities in the region.

(i) SURVEY OF NEED FOR CLIMATE SERVICES.—

(1) IN GENERAL.—The Under Secretary shall provide a report to Congress within 9 months after

the date of enactment of this Act that compiles information on the current climate products being delivered by the National Oceanic and Atmospheric Administration and its partner organizations to users and stakeholders and on the needs of users and stakeholders for new climate products and services.

(2) CONTENTS OF REPORT.—The report shall identify—

(A) specific user groups and stakeholders that currently are served by the National Oceanic and Atmospheric Administration and its partner organizations;

(B) the type of climate products and services currently delivered to specific user groups and stakeholders and the specific National Oceanic and Atmospheric Administration office or partner organization that delivers these products and services;

(C) potential user groups and stakeholders that may be served by expanding climate products and services; and

(D) specific needs for new climate products and services identified by user groups and stakeholders.

(3) CONSULTATION.—The Under Secretary shall consult with the Climate Service Advisory Committee in the preparation of this report.

(j) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Under Secretary shall prepare a plan for creating a Climate Service Program in the National Oceanic and Atmospheric Administration and delivering climate products and services to the National Oceanic and Atmospheric Administration users and stakeholders. The plan shall be submitted to the President and the Congress within 1 year after the date of enactment of this Act.

(2) DRAFT PLAN.—Prior to the submission of the final plan, the Under Secretary shall publish a draft plan in the Federal Register with a public comment period of at least 30 days.

(3) CONTENTS.—The plan shall—

(A) identify the current gaps in climate services and outline the process and resources the National Oceanic and Atmospheric Administration will use to fill these gaps;

(B) describe the roles of the National Oceanic and Atmospheric Administration line offices and the National Oceanic and Atmospheric

Administration partner organizations in the development and delivery of climate products and services;

(C) describe the development and implementation of quality assurance and control mechanisms for climate products and services delivered by the National Oceanic and Atmospheric Administration and its partner organizations;

(D) identify the mechanisms and opportunities for determining user needs and engaging in a two-way dialogue with users that will inform climate product and service development and delivery of authoritative, timely, and useful information on climate variability and change and the effects on local, State, regional, national, and global scales;

(E) identify new responsibilities or tasks to be undertaken by existing National Oceanic and Atmospheric Administration line offices and partner organizations;

(F) identify new infrastructure, equipment, personnel, or other resources needed to implement the proposed plan; and

(G) include responses to the comments received during the public comment period.

(4) CONTINUITY OF SERVICE.—During the development of the implementation plan, the public comment period, and final plan, the National Oceanic and Atmospheric Administration shall continue to provide climate services to the user community.

(5) CONSULTATION.—In developing the plan, the Under Secretary shall consult with user groups and stakeholders, State Climate Offices, Regional Climate Centers, other Federal agencies, the Climate Service Advisory Committee, and Congress.

(6) COORDINATION WITH INTERAGENCY DEVELOPMENT OF A NATIONAL CLIMATE SERVICE.—In preparing the plan required under this subsection, the Under Secretary shall consult with the Director of the Office of Science and Technology Policy to ensure that the program developed by the Agency will serve the needs of a National Climate Service.

(k) SUMMER INSTITUTES PROGRAM AT THE REGIONAL CLIMATE CENTERS.—

(1) DEFINITIONS.—In this subsection:

(A) SUMMER INSTITUTE.—The term ''summer institute'' means an institute, operated during the summer, that—

(i) is hosted by a Regional Climate Center or an eligible partner;

(ii) is operated for a period of not less than 2 weeks; and

(iii) provides direct interaction of middle school and high school teacher and undergraduate student participants with personnel of the Regional Climate Centers or eligible partners who have scientific expertise in weather and climate.

(B) ELIGIBLE PARTNER.—The term ''eligible partner'' means—

(i) the science, engineering, or mathematics department at an institution of higher education; or

(ii) a nonprofit entity with expertise in providing educational enrichment experiences for students.

(2) SUMMER INSTITUTES PROGRAM AUTHORIZED.—

(A) IN GENERAL.—The Under Secretary shall establish a summer institutes program, to be conducted in cooperation with the Regional Climate Centers, which may include an eligible partner. The purpose of the program is to pro-

vide training and professional enrichment by providing opportunities for interaction between participants and climate scientists in a research and operational setting to—

(i) enable middle school and high school teachers to integrate weather and climate sciences into their curricula: and

(ii) encourage undergraduate students to pursue further study and careers in weather and climate sciences.

(B) REQUIRED ACTIVITIES.—Funds authorized under this subsection shall be used for—

(i) providing educational opportunities for middle school and high school teachers and undergraduate students not achievable inside the classroom;

(ii) exposing such teachers and students to researchers, scientists, or engineers who can demonstrate their daily activities to the teachers and students;

(iii) exposing teachers and students to scientific methods in a research discovery setting; and

(iv) assisting teachers with curriculum development in the areas of weather and climate science.

(3) PRIORITY.—The Under Secretary shall ensure that each summer institute program authorized under paragraph (2) includes students from groups underrepresented in the fields of science, technology, engineering, and mathematics teaching, including women and members of minority groups.

(4) REPORT TO CONGRESS.—The Under Secretary shall submit to Congress a biennial report on the activities conducted under this subsection, including the number of participants and the new curricula developed in atmospheric and climate sciences.

(l) CLEARINGHOUSE OF FEDERAL CLIMATE SERVICE PRODUCTS AND LINKS TO FEDERAL AGENCIES PROVIDING CLIMATE SERVICES.—

(1) IN GENERAL.—The Under Secretary shall establish and maintain a clearinghouse to inform State, local, and tribal governments and the public about the information and services available to—

(A) assess the impacts of climate variability and change at different geographic scales;

(B) characterize and forecast climate variability and change for specific regions, resources, and economic sectors; and

(C) develop and implement adaptation strategies to reduce vulnerabilities to climate variability and change.

(2) OTHER RESOURCES.—The clearinghouse shall include hyperlinks to Internet sites that describe the activities, information, and resources of—

(A) the Federal Government;

(B) State and local governments;

(C) the private sector;

(D) nongovernmental and nonprofit entities and organizations; and

(E) international organizations.

(m) FINANCIAL BURDEN.—Nothing in this section shall be construed as authorizing the National Climate Service or the Climate Service Program at the National Oceanic and Atmospheric Administration to require State, tribal, or local governments to develop adaptation or response plans or to take any other action in response to variations in climate that may result in an increased financial burden to such governments.

SEC. 453. STATE PROGRAMS TO BUILD RESILIENCE TO CLIMATE CHANGE IMPACTS.

(a) DEFINITIONS.—For purposes of this section:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act (as added by section 311 of this Act).

(2) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(3) VINTAGE YEAR.—The term ''vintage year'' has the meaning given that term under section 700 of the Clean Air Act (as added by section 312 of this Act).

(b) REGULATIONS; COORDINATION.—Not later than 2 years after the date of enactment of this Act, the Administrator, or such Federal agency head or heads as the President may designate, shall promulgate regulations to implement the requirements of this section. If the President designates more than 1 Federal agency to implement this section, the President shall require such agencies to establish a memorandum of understanding providing for coordination of rulemaking and other implementing activities, in accordance with the requirements of this section.

(c) DISTRIBUTION OF ALLOWANCES.—

(1) IN GENERAL.—Not later than September 30 of each of calendar years 2011 through 2049, the Administrator shall distribute, in accordance with this section, allowances allocated for the following vintage year pursuant to section 782(l) of the Clean Air Act (as added by section 321 of this Act). The Administrator shall reserve 1 percent of such allowances for distribution to Indian tribes in accordance with subsection (d). The remainder of such allowances shall be distributed ratably among the States based on the product of—

(A) each State's population; and

(B) each State's allocation factor as determined under paragraph (2).

(2) STATE ALLOCATION FACTORS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the allocation factor for a State shall be the quotient of—

(i) the per capita income of all individuals in the United States, divided by

(ii) the per capita income of all individuals in such State.

(B) LIMITATION.—If the allocation factor for a State as calculated under subparagraph (A) would exceed 1.2, then the allocation factor

for such State shall be 1.2. If the allocation factor for a State as calculated under subparagraph (A) would be less than 0.8, then the allocation factor for such State shall be 0.8.

(C) PER CAPITA INCOME.—For purposes of this paragraph, per capita income shall be—

(i) determined at 2-year intervals; and

(ii) subject to subparagraph (D), equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(D) REVENUE DIRECTLY RESULTING FROM A PRESIDENTIALLY DECLARED MAJOR DISASTER.—For purposes of this paragraph, per capita income from one or more of the following sources shall be reduced or excluded if the Secretary of Commerce (in consultation with the Administrator and the secretaries or administrators of the departments or agencies involved) determines that the income accrues to persons as the result of a Major Disaster (as declared by the President of the United States) and if

the Secretary finds that the inclusion of one or more of these income sources, in whole or in part, results in a transitory, rather than a sustainable, increase in a State's per capita income level relative to the national average:

(i) Property and casualty insurance (including homeowners and renters insurance).

(ii) The National Flood Insurance Program of the Federal Emergency Management Agency.

(iii) The Individual and Family Grants Program of the Federal Emergency Management Agency.

(iv) The Disaster Housing Program of the Federal Emergency Management Agency.

(v) The Community Development Block Grant Program of the Department of Housing and Urban Development.

(vi) The Disaster Unemployment Assistance Program of the Department of Labor.

(vii) Any other source determined appropriate by the Administrator.

(d) DISTRIBUTION TO INDIAN TRIBES.—The Administrator, or such Federal agency head or heads as the President may designate, shall promulgate regulations establishing a program to distribute allowances on a competitive basis to Indian tribes, in accordance with the requirements of this section. Such allowances shall be used exclusively in accordance with the requirements of subsection (e). Beginning with vintage year 2015, Indian tribes with a tribal adaptation plan approved pursuant to subsection (f) shall be given priority in selection of programs or projects for receipt of emission allowances under this subsection.

(e) USE OF ALLOWANCES.—

(1) IN GENERAL.—States and Indian tribes shall use allowances distributed under this section exclusively for the implementation of projects, programs, or measures to build resilience to the impacts of climate change, including—

(A) extreme weather events such as flooding and tropical cyclones;

(B) more frequent heavy precipitation events;

(C) water scarcity and adverse impacts on water quality;

(D) stronger and longer heat waves;

(E) more frequent and severe droughts;

(F) rises in sea level;

(G) ecosystem disruption;

(H) increased air pollution; and

(I) effects on public health.

(2) PRIORITY IN PROJECTS TO REDUCE FLOOD EVENTS.—When implementing any project, program, or measure supported under this section and designed to reduce flood events, a State or Indian tribe should consider prioritizing projects that seek to—

(A) mitigate the destructive impacts of climate-related increases in the duration, frequency, or magnitude of rainfall or runoff, including snowmelt runoff, as well as hurricanes;

(B) improve flood protection for densely populated urban areas; and

(C) mitigate the destructive impact of ocean-related climate change effects, including effects on bays, estuaries, populated barrier islands and other ocean-related features, through a variety of means and measures, including the construction of jetties, levies, and other coastal structures in densely populated coastal areas impacted by climate change.

(3) STATE AND TRIBAL ADAPTATION PLANS.—Upon approval of a State or tribal climate adaptation plan under subsection (f), allowances received by a State under this section shall be used in accordance with such plan.

(4) SUPPLEMENT, NOT SUPPLANT.—It is the intent of the Congress that allowances distributed to carry out this section should be used to supplement, and not replace, existing sources of funding used to build resilience to the impacts of climate change identified in paragraph (1).

(f) STATE AND TRIBAL CLIMATE ADAPTATION PLANS.—

(1) IN GENERAL.—The regulations promulgated pursuant to subsection (b) shall include requirements for submission and approval of State or tribal climate adaptation plans under this section. Beginning with vintage year 2015, distribution of allowances to a State pursuant to this section shall be contingent on approval of a State climate adaptation plan for such State that meets the requirements of such regulations. Requirements for tribal climate adaptation plans may vary from those of State adaptation plans to the extent necessary to account for the special circumstances of Indian tribes.

(2) REQUIREMENTS.—Regulations promulgated under this section shall require, at minimum, that State and tribal climate adaptation plans—

(A) assess and prioritize the State's or Indian tribe's vulnerability to a broad range of impacts of climate change, based on the best available science;

(B) include an assessment of potential for carbon reduction through changes to land management policies (including enhancement or protection of forest carbon sinks);

(C) identify and prioritize specific cost-effective projects, programs, and measures to build resilience to current and predicted impacts of climate change;

(D) ensure that the State or Indian tribe fully considers and undertakes, to the maximum extent practicable, initiatives that—

(i) protect or enhance natural ecosystem functions, including protection, maintenance, or restoration of natural infrastructure such as wetlands, reefs, and barrier islands to buffer communities from floodwaters or storms, watershed protection to maintain water quality and ground-

water recharge, or floodplain restoration to improve natural flood control capacity; or

(ii) use non-structural approaches including practices that utilize, enhance, or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration, and reuse;

(E) be revised and resubmitted for approval not less frequently than every 5 years; and

(F) be consistent with Federal conservation and environmental laws and, to the maximum extent practicable, avoid environmental degradation.

(3) COORDINATION WITH PRIOR PLANNING EFFORTS.—In implementing this subsection, the Administrator, or such Federal agency head or heads as the President may designate, shall—

(A) draw upon lessons learned and best practices from preexisting State and tribal climate adaptation planning efforts;

(B) seek to avoid duplication of such efforts; and

(C) ensure that the plans developed under this section reflect and are fully consistent with

State natural resources adaptation plans developed under section 479 of this Act.

(g) REPORTING.—Each State or Indian tribe receiving allowances under this section shall submit to the Administrator, or such Federal agency head or heads as the President may designate, within 12 months after each receipt of such allowances and once every 2 years thereafter until the value of any allowances received under this section has been fully expended, a report that—

(1) provides a full accounting for the State's or Indian tribe's use of allowances distributed under this section, including a description of the projects, programs, or measures supported using such allowances;

(2) includes a report prepared by an independent third party, in accordance with such regulations as are promulgated by the Administrator or such other Federal agency head or heads as the President may designate, evaluating the performance of the projects, programs, or measures supported under this section; and

(3) identifies any use by the State or Indian tribe of allowances distributed under this section for the reduction of flood and storm damage and the ef-

fects of climate change on water and flood protection infrastructure.

(h) ENFORCEMENT.—If the Administrator, or such Federal agency head or heads as the President may designate, determines that a State or Indian tribe is not in compliance with this section, the Administrator or such other agency head may withhold a quantity of the allowances equal to up to twice the quantity of allowances that the State or Indian tribe failed to use in accordance with the requirements of this section, that such State or Indian tribe would otherwise be eligible to receive under this section in 1 or more later years. Allowances withheld pursuant to this subsection shall be distributed among the remaining States or Indian tribes ratably in accordance with the formula in subsection (c) in the case of allowances withheld from a State, or in accordance with subsection (d) in the case of allowances withheld from an Indian tribe.

Subpart B—Public Health and Climate Change

SEC. 461. SENSE OF CONGRESS ON PUBLIC HEALTH AND CLIMATE CHANGE.

It is the sense of the Congress that the Federal Government, in cooperation with international, State, tribal, and local governments, concerned public and private orga-

nizations, and citizens, should use all practicable means and measures—

(1) to assist the efforts of public health and health care professionals, first responders, States, tribes, municipalities, and local communities to incorporate measures to prepare health systems to respond to the impacts of climate change;

(2) to ensure—

(A) that the Nation's health professionals have sufficient information to prepare for and respond to the adverse health impacts of climate change;

(B) the utility and value of scientific research in advancing understanding of—

(i) the health impacts of climate change; and

(ii) strategies to prepare for and respond to the health impacts of climate change;

(C) the identification of communities vulnerable to the health effects of climate change and the development of strategic response plans to be carried out by health professionals for those communities;

(D) the improvement of health status and health equity through efforts to prepare for and respond to climate change; and

(E) the inclusion of health policy in the development of climate change responses;

(3) to encourage further research, interdisciplinary partnership, and collaboration among stakeholders in order to—

(A) understand and monitor the health impacts of climate change; and

(B) improve public health knowledge and response strategies to climate change;

(4) to enhance preparedness activities, and public health infrastructure, relating to climate change and health;

(5) to encourage each and every American to learn about the impacts of climate change on health; and

(6) to assist the efforts of developing nations to incorporate measures to prepare health systems to respond to the impacts of climate change.

SEC. 462. RELATIONSHIP TO OTHER LAWS.

Nothing in this subpart in any manner limits the authority provided to or responsibility conferred on any Federal department or agency by any provision of any law

(including regulations) or authorizes any violation of any provision of any law (including regulations), including any health, energy, environmental, transportation, or any other law or regulation.

SEC. 463. NATIONAL STRATEGIC ACTION PLAN.

(a) REQUIREMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services, within 2 years after the date of the enactment of this Act, on the basis of the best available science, and in consultation pursuant to paragraph (2), shall publish a strategic action plan to assist health professionals in preparing for and responding to the impacts of climate change on public health in the United States and other nations, particularly developing nations.

(2) CONSULTATION.—In developing or making any revision to the national strategic action plan, the Secretary shall—

(A) consult with the Director of the Centers for Disease Control and Prevention, the Administrator of the Environmental Protection Agency, the Director of the National Institutes of Health, the Secretary of Energy, other appropriate Federal agencies, Indian tribes, State and local governments, public health organiza-

tions, scientists, and other interested stakeholders; and

(B) provide opportunity for public input.

(b) CONTENTS.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and other appropriate Federal agencies, shall assist health professionals in preparing for and responding effectively and efficiently to the health effects of climate change through measures including—

(A) developing, improving, integrating, and maintaining domestic and international disease surveillance systems and monitoring capacity to respond to health-related effects of climate change, including on topics addressing—

(i) water, food, and vector borne infectious diseases and climate change;

(ii) pulmonary effects, including responses to aeroallergens;

(iii) cardiovascular effects, including impacts of temperature extremes;

(iv) air pollution health effects, including heightened sensitivity to air pollution;

(v) hazardous algal blooms;

(vi) mental and behavioral health impacts of climate change;

(vii) the health of refugees, displaced persons, and vulnerable communities;

(viii) the implications for communities vulnerable to health effects of climate change, as well as strategies for responding to climate change within these communities; and

(ix) local and community-based health interventions for climate-related health impacts;

(B) creating tools for predicting and monitoring the public health effects of climate change on the international, national, regional, State, and local levels, and providing technical support to assist in their implementation;

(C) developing public health communications strategies and interventions for extreme weather events and disaster response situations;

(D) identifying and prioritizing communities and populations vulnerable to the health effects of climate change, and determining actions and communication strategies that should be taken to inform and protect these commu-

nities and populations from the health effects of climate change;

(E) developing health communication, public education, and outreach programs aimed at public health and health care professionals, as well as the general public, to promote preparedness and response strategies relating to climate change and public health, including the identification of greenhouse gas reduction behaviors that are health-promoting; and

(F) developing academic and regional centers of excellence devoted to—

(i) researching relationships between climate change and health;

(ii) expanding and training the public health workforce to strengthen the capacity of such workforce to respond to and prepare for the health effects of climate change;

(iii) creating and supporting academic fellowships focusing on the health effects of climate change; and

(iv) training senior health ministry officials from developing nations to strengthen the capacity of such nations to—

(I) prepare for and respond to the health effects of climate change; and

(II) build an international network of public health professionals with the necessary climate change knowledge base;

(G) using techniques, including health impact assessments, to assess various climate change public health preparedness and response strategies on international, national, State, regional, tribal, and local levels, and make recommendations as to those strategies that best protect the public health;

(H)(i) assisting in the development, implementation, and support of State, regional, tribal, and local preparedness, communication, and response plans (including with respect to the health departments of such entities) to anticipate and reduce the health threats of climate change; and

(ii) pursuing collaborative efforts to develop, integrate, and implement such plans;

(I) creating a program to advance research as it relates to the effects of climate change on

public health across Federal agencies, including research to—

(i) identify and assess climate change health effects preparedness and response strategies;

(ii) prioritize critical public health infrastructure projects related to potential climate change impacts that affect public health; and

(iii) coordinate preparedness for climate change health impacts, including the development of modeling and forecasting tools;

(J) providing technical assistance for the development, implementation, and support of preparedness and response plans to anticipate and reduce the health threats of climate change in developing nations; and

(K) carrying out other activities determined appropriate by the Secretary to plan for and respond to the impacts of climate change on public health.

(c) REVISION.—The Secretary shall revise the national strategic action plan not later than July 1, 2014, and every 4 years thereafter, to reflect new information

collected pursuant to implementation of the national strategic action plan and otherwise, including information on—

(1) the status of critical environmental health parameters and related human health impacts;

(2) the impacts of climate change on public health; and

(3) advances in the development of strategies for preparing for and responding to the impacts of climate change on public health.

(d) IMPLEMENTATION.—

(1) IMPLEMENTATION THROUGH HHS.—The Secretary shall exercise the Secretary's authority under this subpart and other provisions of Federal law to achieve the goals and measures of the national strategic action plan.

(2) OTHER PUBLIC HEALTH PROGRAMS AND INITIATIVES.—The Secretary and Federal officials of other relevant Federal agencies shall administer public health programs and initiatives authorized by provisions of law other than this subpart, subject to the requirements of such statutes, in a manner designed to achieve the goals of the national strategic action plan.

(3) CDC.—In furtherance of the national strategic action plan, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and the head of any other appropriate Federal agency, shall—

(A) conduct scientific research to assist health professionals in preparing for and responding to the impacts of climate change on public health; and

(B) provide funding for—

(i) research on the health effects of climate change; and

(ii) preparedness planning on the international, national, State, tribal, regional, and local levels to respond to or reduce the burden of health effects of climate change; and

(C) carry out other activities determined appropriate by the Director or the head of such agency to prepare for and respond to the impacts of climate change on public health.

SEC. 464. ADVISORY BOARD.

(a) ESTABLISHMENT.—The Secretary shall establish a permanent science advisory board comprised of not less than 10 and not more than 20 members.

(b) APPOINTMENT OF MEMBERS.—The Secretary shall appoint the members of the science advisory board from among individuals—

(1) who have expertise in public health and human services, climate change, and other relevant disciplines; and

(2) at least ½ of whom are recommended by the President of the National Academy of Sciences.

(c) FUNCTIONS.—The science advisory board shall—

(1) provide scientific and technical advice and recommendations to the Secretary on the domestic and international impacts of climate change on public health, populations and regions particularly vulnerable to the effects of climate change, and strategies and mechanisms to prepare for and respond to the impacts of climate change on public health; and

(2) advise the Secretary regarding the best science available for purposes of issuing the national strategic action plan.

SEC. 465. REPORTS.

(a) NEEDS ASSESSMENT.—

(1) IN GENERAL.—The Secretary shall seek to enter into, by not later than 6 months after the date of the enactment of this Act, an agreement with the

National Research Council and the Institute of Medicine to complete a report that—

(A) assesses the needs for health professionals to prepare for and respond to climate change impacts on public health; and

(B) recommends programs to meet those needs.

(2) SUBMISSION.—The agreement under paragraph (1) shall require the completed report to be submitted to the Congress and the Secretary and made publicly available not later than 1 year after the date of the agreement.

(b) CLIMATE CHANGE HEALTH PROTECTION AND PROMOTION REPORTS.—

(1) IN GENERAL.—The Secretary, in consultation with the advisory board established under section 464, shall ensure the issuance of reports to aid health professionals in preparing for and responding to the adverse health effects of climate change that—

(A) review scientific developments on health impacts of climate change; and

(B) recommend changes to the national strategic action plan.

(2) SUBMISSION.—The Secretary shall submit the reports required by paragraph (1) to the Congress and make such reports publicly available not later than July 1, 2013, and every 4 years thereafter.

SEC. 466. DEFINITIONS.

In this subpart:

(1) HEALTH IMPACT ASSESSMENT.—The term ''health impact assessment'' means a combination of procedures, methods, and tools by which a policy, program, or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population.

(2) NATIONAL STRATEGIC ACTION PLAN.—The term ''national strategic action plan'' means the plan issued and revised under section 463.

(3) SECRETARY.—Unless otherwise specified, the term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 467. CLIMATE CHANGE HEALTH PROTECTION AND PROMOTION FUND.

(a) ESTABLISHMENT OF FUND.—There is hereby established in the Treasury a separate account that shall be known as the Climate Change Health Protection and Promotion Fund.

(b) AVAILABILITY OF AMOUNTS.—All amounts deposited into the Climate Change Health Protection and Promotion Fund shall be available to the Secretary to carry out this subpart subject to further appropriation.

(c) DISTRIBUTION OF FUNDS BY HHS.—In carrying out this subpart, the Secretary may make funds deposited in the Climate Change Health Protection and Promotion Fund available to—

(1) other departments, agencies, and offices of the Federal Government;

(2) foreign, State, tribal, and local governments; and

(3) such other entities as the Secretary determines appropriate.

(d) SUPPLEMENT, NOT REPLACE.—It is the intent of Congress that funds made available to carry out this subpart should be used to supplement, and not replace, existing sources of funding for public health.

Subpart C—Natural Resource Adaptation

SEC. 471. PURPOSES.

The purposes of this subpart are to—

(1) establish an integrated Federal program to protect, restore, and conserve the Nation's natural resources in response to the threats of climate change and ocean acidification; and

(2) provide financial support and incentives for programs, strategies, and activities that protect, restore, and conserve the Nation's natural resources in response to the threats of climate change and ocean acidification.

SEC. 472. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION POLICY.

It is the policy of the Federal Government, in cooperation with State and local governments, Indian tribes, and other interested stakeholders to use all practicable means and measures to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification.

SEC. 473. DEFINITIONS.

In this subpart:

(1) COASTAL STATE.—The term ''coastal State'' has the meaning given the term in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

(2) CORRIDORS.—The term ''corridors'' means areas that provide connectivity, over different time scales (including seasonal or longer), of habitat or potential habitat and that facilitate the ability of terrestrial, marine, estuarine, and freshwater fish, wild-

life, or plants to move within a landscape as needed for migration, gene flow, or dispersal, or in response to the impacts of climate change and ocean acidification or other impacts.

(3) ECOLOGICAL PROCESSES.—The term ''ecological processes'' means biological, chemical, or physical interaction between the biotic and abiotic components of an ecosystem and includes—

(A) nutrient cycling;

(B) pollination;

(C) predator-prey relationships;

(D) soil formation;

(E) gene flow;

(F) disease epizootiology;

(G) larval dispersal and settlement;

(H) hydrological cycling;

(I) decomposition; and

(J) disturbance regimes such as fire and flooding.

(4) HABITAT.—The term ''habitat'' means the physical, chemical, and biological properties that are used by fish, wildlife, or plants for growth, reproduction, survival, food, water, and cover, on a tract of land, in a body of water, or in an area or region.

(5) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(6) NATURAL RESOURCES.—The term ''natural resources'' means the terrestrial, freshwater, estuarine, and marine fish, wildlife, plants, land, water, habitats, and ecosystems of the United States.

(7) NATURAL RESOURCES ADAPTATION.—The term ''natural resources adaptation'' means the protection, restoration, and conservation of natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification.

(8) RESILIENCE.—Each of the terms ''resilience'' and ''resilient'' means the ability to resist or recover from disturbance and preserve diversity, productivity, and sustainability.

(9) STATE.—The term ''State'' means—

(A) a State of the United States;

(B) the District of Columbia; and

(C) the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa.

SEC. 474. COUNCIL ON ENVIRONMENTAL QUALITY.

The Chair of the Council on Environmental Quality shall—

(1) advise the President on implementation and development of—

(A) a Natural Resources Climate Change Adaptation Strategy required under section 476; and

(B) Federal natural resource agency adaptation plans required under section 478;

(2) serve as the Chair of the Natural Resources Climate Change Adaptation Panel established under section 475; and

(3) coordinate Federal agency strategies, plans, programs, and activities related to protecting, restoring, and maintaining natural resources to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification.

SEC. 475. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION PANEL.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subpart, the President shall establish a Natural Resources Climate Change Adaptation Panel, consisting of—

(1) the head, or their designee, of each of—

(A) the National Oceanic and Atmospheric Administration;

(B) the Forest Service;

(C) the National Park Service;

(D) the United States Fish and Wildlife Service;

(E) the Bureau of Land Management;

(F) the United States Geological Survey;

(G) the Bureau of Reclamation;

(H) the Bureau of Indian Affairs;

(I) the Environmental Protection Agency; and

(J) the Army Corps of Engineers;

(2) the Chair of the Council on Environmental Quality; and

(3) the heads of such other Federal agencies or departments with jurisdiction over natural resources of the United States, as determined by the President.

(b) FUNCTIONS.—The Panel shall serve as a forum for interagency consultation on and the coordination of the development and implementation of a national Natural Resources Climate Change Adaptation Strategy required under section 476.

(c) CHAIR.—The Chair of the Council on Environmental Quality shall serve as the Chair of the Panel.

SEC. 476. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION STRATEGY.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this subpart, the President, through the Natural Resources Climate Change Adaptation Panel established under section 475, shall develop a Natural Resources Climate Change Adaptation Strategy to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification and to identify opportunities to mitigate those impacts.

(b) DEVELOPMENT AND REVISION.—In developing and revising the Strategy, the Panel shall—

(1) base the strategy on the best available science;

(2) develop the strategy in close cooperation with States and Indian tribes;

(3) coordinate with other Federal agencies as appropriate;

(4) consult with local governments, conservation organizations, scientists, and other interested stakeholders;

(5) provide public notice and opportunity for comment; and

(6) review and revise the Strategy every 5 years to incorporate new information regarding the impacts of climate change and ocean acidification on natural resources and advances in the development of strategies for becoming more resilient and adapting to those impacts.

(c) CONTENTS.—The National Resources Adaptation Strategy shall include—

(1) an assessment of the vulnerability of natural resources to climate change and ocean acidification, including the short-term, medium-term, long-term, cumulative, and synergistic impacts;

(2) a description of current research, observation, and monitoring activities at the Federal, State, tribal, and local level related to the impacts of climate change and ocean acidification on natural resources, as well as identification of research and data needs and priorities;

(3) identification of natural resources that are likely to have the greatest need for protection, restoration, and conservation because of the adverse effects of climate change and ocean acidification;

(4) specific protocols for integrating climate change and ocean acidification adaptation strategies and activities into the conservation and management of natural resources by Federal departments and agencies to ensure consistency across agency jurisdictions and resources;

(5) specific actions that Federal departments and agencies shall take to protect, conserve, and restore natural resources to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification, including a timeline to implement those actions;

(6) specific mechanisms for ensuring communication and coordination among Federal departments and agencies, and between Federal departments and agencies and State natural resource agencies, United States territories, Indian tribes, private landowners, conservation organizations, and other nations that share jurisdiction over natural resources with the United States;

(7) specific actions to develop and implement consistent natural resources inventory and monitoring protocols through interagency coordination and collaboration; and

(8) a process for guiding the development of detailed agency- and department-specific adaptation plans required under section 478 to address the impacts of climate change and ocean acidification on the natural resources in the jurisdiction of each agency.

(d) IMPLEMENTATION.—Consistent with its authorities under other laws and with Federal trust responsibilities with respect to Indian lands, each Federal department or agency with representation on the National Resources Climate Change Adaptation Panel shall consider the impacts of climate change and ocean acidification and integrate the elements of the strategy into agency plans, environmental reviews, programs, and activities related to the conservation, restoration, and management of natural resources.

SEC. 477. NATURAL RESOURCES ADAPTATION SCIENCE AND INFORMATION.

(a) COORDINATION.—Not later than 90 days after the date of the enactment of this subpart, the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration, and the Secretary of the Interior, acting through the Director of the United States Geological Survey, shall establish a coordinated process for developing and providing science and

information needed to assess and address the impacts of climate change and ocean acidification on natural resources. The process shall be led by the National Climate Change and Wildlife Science Center established within the United States Geological Survey under subsection (d) and the National Climate Service of the National Oceanic and Atmospheric Administration.

(b) FUNCTIONS.—The Secretaries shall ensure that such process avoids duplication and that the National Oceanic and Atmospheric Administration and the United States Geological Survey shall—

(1) provide technical assistance to Federal departments and agencies, State and local governments, Indian tribes, and interested private landowners in their efforts to assess and address the impacts of climate change and ocean acidification on natural resources;

(2) conduct and sponsor research and provide Federal departments and agencies, State and local governments, Indian tribes, and interested private landowners with research products, decision and monitoring tools and information, to develop strategies for assisting natural resources to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification; and

(3) assist Federal departments and agencies in the development of the adaptation plans required under section 478.

(c) SURVEY.—Not later than one year after the date of enactment of this subpart and every 5 years thereafter, the Secretary of Commerce and the Secretary of the Interior shall undertake a climate change and ocean acidification impact survey that—

(1) identifies natural resources considered likely to be adversely affected by climate change and ocean acidification;

(2) includes baseline monitoring and ongoing trend analysis;

(3) uses a stakeholder process to identify and prioritize needed monitoring and research that is of greatest relevance to the ongoing needs of natural resource managers to address the impacts of climate change and ocean acidification; and

(4) identifies decision tools necessary to develop strategies for assisting natural resources to become more resilient and adapt to and withstand the impacts of climate change and ocean acidification.

(d) NATIONAL CLIMATE CHANGE AND WILDLIFE SCIENCE CENTER.—

(1) ESTABLISHMENT.—The Secretary of the Interior shall establish the National Climate Change and Wildlife Science Center within the United States Geological Survey.

(2) FUNCTIONS.—The Center shall, in collaboration with Federal and State natural resources agencies and departments, Indian tribes, universities, and other partner organizations—

(A) assess and synthesize current physical and biological knowledge and prioritize scientific gaps in such knowledge in order to forecast the ecological impacts of climate change on fish and wildlife at the ecosystem, habitat, community, population, and species levels;

(B) develop and improve tools to identify, evaluate, and, where appropriate, link scientific approaches and models for forecasting the impacts of climate change and adaptation on fish, wildlife, plants, and their habitats, including monitoring, predictive models, vulnerability analyses, risk assessments, and decision support systems to help managers make informed decisions;

(C) develop and evaluate tools to adaptively manage and monitor the effects of climate

change on fish and wildlife at national, regional, and local scales; and

(D) develop capacities for sharing standardized data and the synthesis of such data.

(e) SCIENCE ADVISORY BOARD.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this subpart, the Secretary of Commerce and the Secretary of the Interior shall establish and appoint the members of a Science Advisory Board, to be comprised of not fewer than 10 and not more than 20 members—

(A) who have expertise in fish, wildlife, plant, aquatic, and coastal and marine biology, ecology, climate change, ocean acidification, and other relevant scientific disciplines;

(B) who represent a balanced membership among Federal, State, Indian tribes, and local representatives, universities, and conservation organizations; and

(C) at least ½ of whom are recommended by the President of the National Academy of Sciences.

(2) DUTIES.—The Science Advisory Board shall—

(A) advise the Secretaries on the state-of-the-science regarding the impacts of climate change and ocean acidification on natural resources and scientific strategies and mechanisms for protecting, restoring, and conserving natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification; and

(B) identify and recommend priorities for ongoing research needs on such issues.

(3) COLLABORATION.—The Science Advisory Board shall collaborate with other climate change and ecosystem research entities in other Federal agencies and departments.

(4) AVAILABILITY TO THE PUBLIC.—The advice and recommendations of the Science Advisory Board shall be made available to the public.

SEC. 478. FEDERAL NATURAL RESOURCE AGENCY ADAPTATION PLANS.

(a) DEVELOPMENT.—Not later than 1 year after the date of the development of a Natural Resources Climate Change Adaptation Strategy under section 476, each department or agency that has a representative on the Nat-

ural Resources Climate Change Adaptation Panel established under section 475 shall—

(1) complete an adaptation plan for that department or agency, respectively, implementing the Natural Resources Climate Change Adaptation Strategy under section 476 and consistent with the Natural Resources Climate Change Adaptation Policy under section 472, detailing the department's or agency's current and projected efforts to address the potential impacts of climate change and ocean acidification on natural resources within the department's or agency's jurisdiction and necessary additional actions, including a timeline for implementation of those actions;

(2) provide opportunities for review and comment on that adaptation plan by the public, including in the case of a plan by the Bureau of Indian Affairs, review by Indian tribes; and

(3) submit such plan to the President for approval.

(b) REVIEW BY PRESIDENT AND SUBMISSION TO CONGRESS.—

(1) REVIEW BY PRESIDENT.—The President shall—

(A) approve an adaptation plan submitted under subsection (a)(3) if the plan meets the requirements of subsection (c) and is consistent with the strategy developed under section 476;

(B) decide whether to approve the plan within 60 days after submission; and

(C) if the President disapproves a plan, direct the department or agency to submit a revised plan to the President under subsection (a)(3) within 60 days after such disapproval.

(2) SUBMISSION TO CONGRESS.—Not later than 30 days after the date of approval of such adaptation plan by the President, the department or agency shall submit the approved plan to the Committee on Natural Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the committees of the House of Representatives and the Senate with principal jurisdiction over the department or agency.

(c) REQUIREMENTS.—Each adaptation plan shall—

(1) establish programs for assessing the current and future impacts of climate change and ocean acidification on natural resources within the department's or agency's, respectively, jurisdiction, including cumulative and synergistic effects, and for iden-

tifying and monitoring those natural resources that are likely to be adversely affected and that have need for conservation;

(2) identify and prioritize the department's or agency's strategies and specific conservation actions to address the current and future impacts of climate change and ocean acidification on natural resources within the scope of the department's or agency's jurisdiction and to develop and implement strategies to protect, restore, and conserve such resources to become more resilient, adapt to, and better withstand those impacts, including—

(A) the protection, restoration, and conservation of terrestrial, marine, estuarine, and freshwater habitats and ecosystems;

(B) the establishment of terrestrial, marine, estuarine, and freshwater habitat linkages and corridors;

(C) the restoration and conservation of ecological processes;

(D) the protection of a broad diversity of native species of fish, wildlife, and plant populations across their range; and

(E) the protection of fish, wildlife, and plant health, recognizing that climate can alter

the distribution and ecology of parasites, pathogens, and vectors;

(3) describe how the department or agency will integrate such strategies and conservation activities into plans, programs, activities, and actions of the department or agency, related to the conservation and management of natural resources and establish new plans, programs, activities, and actions as necessary;

(4) establish methods for assessing the effectiveness of strategies and conservation actions taken to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of climate change and ocean acidification, and for updating those strategies and actions to respond to new information and changing conditions;

(5) include a description of current and proposed mechanisms to enhance cooperation and coordination of natural resources adaptation efforts with other Federal agencies, State and local governments, Indian tribes, and nongovernmental stakeholders;

(6) include specific written guidance to resource managers to—

(A) explain how managers are expected to address the effects of climate change and ocean acidification;

(B) identify how managers are to obtain any site-specific information that may be necessary; and

(C) reflect best practices shared among relevant agencies, while also recognizing the unique missions, objectives, and responsibilities of each agency; and

(7) identify and assess data and information gaps necessary to develop natural resources adaptation plans and strategies.

(d) IMPLEMENTATION.—

(1) IN GENERAL.—Upon approval by the President, each department or agency that serves on the Natural Resources Climate Change Adaptation Panel shall implement its adaptation plan through existing and new plans, policies, programs, activities, and actions to the extent not inconsistent with existing authority.

(2) CONSIDERATION OF IMPACTS.—

(A) IN GENERAL.—To the maximum extent practicable and consistent with applicable law, every natural resource management deci-

sion made by the department or agency shall consider the impacts of climate change and ocean acidification on those natural resources.

(B) GUIDANCE.—The Council on Environmental Quality shall issue guidance for Federal departments and agencies for considering those impacts.

(e) REVISION AND REVIEW.—Not less than every 5 years, each adaptation plan under this section shall be reviewed and revised to incorporate the best available science and other information regarding the impacts of climate change and ocean acidification on natural resources.

SEC. 479. STATE NATURAL RESOURCES ADAPTATION PLANS.

(a) REQUIREMENT.—In order to be eligible for funds under section 480, not later than 1 year after the development of a Natural Resources Climate Change Adaptation Strategy required under section 476 each State shall prepare a State natural resources adaptation plan detailing the State's current and projected efforts to address the potential impacts of climate change and ocean acidification on natural resources and coastal areas within the State's jurisdiction.

(b) REVIEW OR APPROVAL.—

(1) IN GENERAL.—Each State adaptation plan shall be reviewed and approved or disapproved by the Secretary of the Interior and, as applicable, the Secretary of Commerce. Such approval shall be granted if the plan meets the requirements of subsection (c) and is consistent with the Natural Resources Climate Change Adaptation Strategy required under section 476.

(2) APPROVAL OR DISAPPROVAL.—Within 180 days after transmittal of such a plan, or a revision to such a plan, the Secretary of the Interior and, as applicable, the Secretary of Commerce shall approve or disapprove the plan by written notice.

(3) RESUBMITTAL.—Within 90 days after transmittal of a resubmitted adaptation plan as a result of disapproval under paragraph (3), the Secretary of the Interior and, as applicable, the Secretary of Commerce, shall approve or disapprove the plan by written notice.

(c) CONTENTS.—A State natural resources adaptation plan shall—

(1) include a strategy for addressing the impacts of climate change and ocean acidification on terrestrial, marine, estuarine, and freshwater fish,

wildlife, plants, habitats, ecosystems, wildlife health, and ecological processes, that—

(A) describes the impacts of climate change and ocean acidification on the diversity and health of the fish, wildlife and plant populations, habitats, ecosystems, and associated ecological processes;

(B) establishes programs for monitoring the impacts of climate change and ocean acidification on fish, wildlife, and plant populations, habitats, ecosystems, and associated ecological processes;

(C) describes and prioritizes proposed conservation actions to assist fish, wildlife, plant populations, habitats, ecosystems, and associated ecological processes in becoming more resilient, adapting to, and better withstanding those impacts;

(D) includes strategies, specific conservation actions, and a time frame for implementing conservation actions for fish, wildlife, and plant populations, habitats, ecosystems, and associated ecological processes;

(E) establishes methods for assessing the effectiveness of strategies and conservation ac-

tions taken to assist fish, wildlife, and plant populations, habitats, ecosystems, and associated ecological processes in becoming more resilient, adapt to, and better withstand the impacts of climate changes and ocean acidification and for updating those strategies and actions to respond appropriately to new information or changing conditions;

(F) is incorporated into a revision of the State wildlife action plan (also known as the State comprehensive wildlife strategy)—

(i) that has been submitted to the United States Fish and Wildlife Service; and

(ii) that has been approved by the Service or on which a decision on approval is pending; and

(G) is developed—

(i) with the participation of the State fish and wildlife agency, the State coastal agency, the State agency responsible for administration of Land and Water Conservation Fund grants, the State Forest Legacy program coordinator, and other

State agencies considered appropriate by the Governor of such State; and

(ii) in coordination with the Secretary of the Interior, and where applicable, the Secretary of Commerce and other States that share jurisdiction over natural resources with the State; and

(2) include, in the case of a coastal State, a strategy for addressing the impacts of climate change and ocean acidification on the coastal zone that—

(A) identifies natural resources that are likely to be impacted by climate change and ocean acidification and describes those impacts;

(B) identifies and prioritizes continuing research and data collection needed to address those impacts including—

(i) acquisition of high resolution coastal elevation and nearshore bathymetry data;

(ii) historic shoreline position maps, erosion rates, and inventories of shoreline features and structures;

(iii) measures and models of relative rates of sea level rise or lake level changes,

including effects on flooding, storm surge, inundation, and coastal geological processes;

(iv) habitat loss, including projected losses of coastal wetlands and potentials for inland migration of natural shoreline habitats;

(v) ocean and coastal species and ecosystem migrations, and changes in species population dynamics;

(vi) changes in storm frequency, intensity, or rainfall patterns;

(vii) saltwater intrusion into coastal rivers and aquifers;

(viii) changes in chemical or physical characteristics of marine and estuarine systems;

(ix) increased harmful algal blooms; and

(x) spread of invasive species;

(C) identifies and prioritizes adaptation strategies to protect, restore, and conserve natural resources to enable them to become more resilient, adapt to, and withstand the impacts of

climate change and ocean acidification, including—

(i) protection, maintenance, and restoration of ecologically important coastal lands, coastal and ocean ecosystems, and species biodiversity and the establishment of habitat buffer zones, migration corridors, and climate refugia; and

(ii) improved planning, siting policies, and hazard mitigation strategies;

(D) establishes programs for the long-term monitoring of the impacts of climate change and ocean acidification on the ocean and coastal zone and to assess and adjust, when necessary, such adaptive management strategies;

(E) establishes performance measures for assessing the effectiveness of adaptation strategies intended to improve resilience and the ability of natural resources in the coastal zone to adapt to and withstand the impacts of climate change and ocean acidification and of adaptation strategies intended to minimize those impacts on the coastal zone and to update those strategies to respond to new information or changing conditions; and

(F) is developed with the participation of the State coastal agency and other appropriate State agencies and in coordination with the Secretary of Commerce and other appropriate Federal agencies.

(d) PUBLIC INPUT.—States shall provide for solicitation and consideration of public and independent scientific input in the development of their plans.

(e) COORDINATION WITH OTHER PLANS.—The State plan shall take into consideration research and information contained in, and coordinate with and integrate the goals and measures identified in, as appropriate, other natural resources conservation strategies, including—

(1) the national fish habitat action plan;

(2) plans under the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.);

(3) the Federal, State, and local partnership known as ''Partners in Flight'';

(4) federally approved coastal zone management plans under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(5) federally approved regional fishery management plants and habitat conservation activities under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(6) the national coral reef action plan;

(7) recovery plans for threatened species and endangered species under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f));

(8) habitat conservation plans under section 10 of that Act (16 U.S.C. 1539);

(9) other Federal, State, and tribal plans for imperiled species;

(10) State or tribal hazard mitigation plans;

(11) State or tribal water management plans; and

(12) other State-based strategies that comprehensively implement adaptation activities to remediate the effects of climate change and ocean acidification on terrestrial, marine, and freshwater fish, wildlife, plants, and other natural resources.

(f) UPDATING.—Each State plan shall be updated not less than every 5 years.

(g) FUNDING.—

(1) IN GENERAL.—Funds allocated to States under section 480 shall be used only for activities that are consistent with a State natural resources adaptation plan that has been approved by the Secretaries of Interior and Commerce.

(2) FUNDING PRIOR TO THE APPROVAL OF A STATE PLAN.—Until the earlier of the date that is 3 years after the date of the enactment of this subpart or the date on which a State receives approval for the State strategy, a State shall be eligible to receive funding under section 480 for adaptation activities that are—

(A) consistent with the comprehensive wildlife strategy of the State and, where appropriate, other natural resources conservation strategies; and

(B) in accordance with a workplan developed in coordination with—

(i) the Secretary of the Interior; and

(ii) the Secretary of Commerce, for any coastal State subject to the condition that coordination with the Secretary of Commerce shall be required only for those portions of the strategy relating to activities affecting the coastal zone.

(3) PENDING APPROVAL.—During the period for which approval by the applicable Secretary of a State plan is pending, the State may continue receiving funds under section 480 pursuant to the workplan described in paragraph (2)(B).

SEC. 480. NATURAL RESOURCES CLIMATE CHANGE ADAPTATION FUND.

(a) ALLOCATIONS TO STATES.—100 percent of the emission allowances made available for each year to carry out this subpart shall be provided to States to carry out natural resources adaptation activities in accordance with State natural resources adaptation plans approved under section 479. Specifically—

(1) 84.4 percent shall be available to State wildlife agencies in accordance with the apportionment formula established under the second subsection (c) of section 4 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c), as added by section 902(e) of H.R. 5548 as introduced in the 106th Congress and enacted into law by section 1(a)(2) of Public Law 106–553 (114 Stat. 2762A–119); and

(2) 15.6 percent shall be available to State coastal agencies pursuant to the formula established by the Secretary of Commerce under section 306(c) of the Coastal Management Act of 1972 (16 U.S.C. 1455(c)).

(b) ESTABLISHMENT OF FUND.—

(1) ESTABLISHMENT.—There is hereby established in the Treasury a separate account that shall

be known as the Natural Resources Climate Change Adaptation Fund.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for subsection (c) such sums as are deposited in the Natural Resources Climate Change Fund, and the amounts appropriated for subsection (c) shall be no less than the total estimated annual deposits in the Natural Resources Climate Change Adaptation Fund. Such appropriations shall be offset by the amounts deposited in such fund pursuant to section 782(m) of the Clean Air Act.

(c) ALLOCATIONS TO FEDERAL AGENCIES.—

(1) DEPARTMENT OF THE INTERIOR.—Of the amounts made available for each fiscal year to carry out this subpart—

(A) 27.6 percent shall be allocated to the Secretary of the Interior for use in funding—

(i) natural resources adaptation activities carried out—

(I) under endangered species, migratory species, and other fish and wildlife programs administered by the National Park Service, the United States Fish and Wildlife Service, the

Bureau of Indian Affairs, and the Bureau of Land Management;

(II) on wildlife refuges, National Park Service land, and other public land under the jurisdiction of the United States Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Indian Affairs, or the National Park Service; or

(III) within Federal water managed by the Bureau of Reclamation and the National Park Service; and

(ii) for the implementation of the National Fish and Wildlife Habitat and Corridors Identification Program pursuant to section 481;

(B) 8.1 percent shall be allocated to the Secretary of the Interior for natural resources adaptation activities carried out under cooperative grant programs, including—

(i) the cooperative endangered species conservation fund authorized under section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535);

(ii) programs under the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.);

(iii) the Neotropical Migratory Bird Conservation Fund established by section 478(a) of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6108(a));

(iv) the Coastal Program of the United States Fish and Wildlife Service;

(v) the National Fish Habitat Action Plan;

(vi) the Partners for Fish and Wildlife Program;

(vii) the Landowner Incentive Program;

(viii) the Wildlife Without Borders Program of the United States Fish and Wildlife Service; and

(ix) the Migratory Species Program and Park Flight Migratory Bird Program of the National Park Service; and

(C) 4.9 percent shall be allocated to the Secretary of the Interior to provide financial assistance to Indian tribes to carry out natural resources adaptation activities through the

Tribal Wildlife Grants Program of the United States Fish and Wildlife Service.

(2) LAND AND WATER CONSERVATION FUND.—

(A) DEPOSITS.—

(i) IN GENERAL.—Of the amounts made available for each fiscal year to carry out this subpart, 19.5 percent shall be deposited into the Land and Water Conservation Fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–5).

(ii) USE OF DEPOSITS.— (I) Deposits into the Land and Water Conservation Fund under this paragraph shall be supplemental to authorizations provided under section 3 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6), which shall remain available for non-adaptation needs.

(II) There are authorized to be appropriated for activities in this subpart such sums as are deposited in the Land and Water Conservation Fund pursuant to section 480(c)(3)(A)(ii), and the amounts appropriated for this paragraph shall be no

less than the total estimated annual deposits in the Land and Water Conservation Fund. Such appropriations shall be offset by the amounts deposited in such Fund pursuant to section 782(m).

(B) ALLOCATIONS.—Of the amounts deposited under this paragraph into the Land and Water Conservation Fund—

(i) ⅙ shall be allocated to the Secretary of the Interior and made available on a competitive basis to carry out natural resources adaptation activities through the acquisition of land and interests in land under section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–8)—

(I) to States in accordance with their natural resources adaptation plans, and to Indian tribes;

(II) notwithstanding section 5 of that Act (16 U.S.C. 460l–7); and

(III) in addition to any funds provided pursuant to annual appropriations Acts, the Energy Policy Act of 2005 (42 U.S.C. 15801 et seq.), or

any other authorization for non-adaptation needs;

(ii) ⅓ shall be allocated to the Secretary of the Interior to carry out natural resources adaptation activities through the acquisition of lands and interests in land under section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9);

(iii) ⅙ shall be allocated to the Secretary of Agriculture and made available to the States and Indian tribes to carry out natural resources adaptation activities through the acquisition of land and interests in land under section 7 of the Forest Legacy Program under the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103c); and

(iv) ⅓ shall be allocated to the Secretary of Agriculture to carry out natural resources adaptation activities through the acquisition of land and interests in land under section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9).

(C) EXPENDITURE OF FUNDS.—In allocating funds under subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall take into consideration factors including—

(i) the availability of non-Federal contributions from State, local, or private sources;

(ii) opportunities to protect fish and wildlife corridors or otherwise to link or consolidate fragmented habitats;

(iii) opportunities to reduce the risk of catastrophic wildfires, drought, extreme flooding, or other climate-related events that are harmful to fish and wildlife and people; and

(iv) the potential for conservation of species or habitat types at serious risk due to climate change, ocean acidification, and other stressors.

(3) FOREST SERVICE.—Of the amounts made available for each fiscal year to carry out this subpart, 8.1 percent shall be allocated to the Secretary of Agriculture for use in funding natural resources adaptation activities carried out on national forests

and national grasslands under the jurisdiction of the Forest Service.

(4) DEPARTMENT OF COMMERCE.—Of the amounts made available for each fiscal year to carry out this subpart, 11.5 percent shall be allocated to the Secretary of Commerce for use in funding natural resources adaptation activities to protect, maintain, and restore coastal, estuarine, and marine resources, habitats, and ecosystems, including such activities carried out under—

(A) the coastal and estuarine land conservation program;

(B) the community-based restoration program;

(C) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), that are specifically designed to strengthen the ability of coastal, estuarine, and marine resources, habitats, and ecosystems to adapt to and withstand the impacts of climate change and ocean acidification;

(D) the Open Rivers Initiative;

(E) the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(F) the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.);

(G) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(H) the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.);

(I) the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.); and

(J) the Estuary Restoration Act of 2000 (33 U.S.C. 2901 et seq.).

(5) ENVIRONMENTAL PROTECTION AGENCY.—Of the amounts made available each fiscal year to carry out this section, 12.2 percent shall be allocated to the Administrator for use in natural resources adaptation activities restoring and protecting—

(A) large-scale freshwater aquatic ecosystems, such as the Everglades, the Great Lakes, Flathead Lake, the Missouri River, the Mississippi River, the Colorado River, the Sacramento-San Joaquin Rivers, the Ohio River, the Columbia-Snake River System, the Apalachicola, Chattahoochee, and Flint River System, the Connecticut River, and the Yellowstone River;

(B) large-scale estuarine ecosystems, such as Chesapeake Bay, Long Island Sound, Puget Sound, the Mississippi River Delta, the San Francisco Bay Delta, Narragansett Bay, and Albemarle-Pamlico Sound; and

(C) freshwater and estuarine ecosystems, watersheds, and basins identified as priorities by the Administrator, working in cooperation with other Federal agencies, States, Indian tribes, local governments, scientists, and other conservation partners.

(6) CORPS OF ENGINEERS.—Of the amounts made available each fiscal year to carry out this section, 8.1 percent shall be available to the Secretary of the Army for use by the Corps of Engineers to carry out natural resources adaptation activities restoring—

(A) large-scale freshwater aquatic ecosystems, such as the ecosystems described in paragraph (5)(A);

(B) large-scale estuarine ecosystems, such as the ecosystems described in paragraph (5)(B);

(C) freshwater and estuarine ecosystems, watersheds, and basins identified as priorities

by the Corps of Engineers, working in cooperation with other Federal agencies, States, Indian tribes, local governments, scientists, and other conservation partners; and

(D) habitats and ecosystems through the implementation of estuary habitat restoration projects authorized by the Estuary Restoration Act of 2000 (33 U.S.C. 2901 et seq.), project modifications for improvement of the environment, aquatic restoration and protection projects authorized by section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330), and other appropriate programs and activities.

(d) USE OF FUNDS BY FEDERAL DEPARTMENTS AND AGENCIES.—Funds allocated to Federal departments and agencies under this section shall only be used for natural resources adaptation activities that are consistent with an adaptation plan developed and approved by the President under section 478.

(e) STATE COST SHARING.—Notwithstanding any other provision of law, a State that receives a grant with amounts allocated under this section shall use funds from non-Federal sources to pay at least 10 percent of the costs

of each activity carried out using amounts provided under the grant.

SEC. 481. NATIONAL WILDLIFE HABITAT AND CORRIDORS INFORMATION PROGRAM.

(a) ESTABLISHMENT.—Within 6 months of the date of enactment of this subpart, the Secretary of the Interior, in cooperation with the States and Indian tribes, shall establish a National Fish and Wildlife Habitat and Corridors Information Program in accordance with the requirements of this section.

(b) PURPOSE.—The purpose of this program is to—

(1) support States and Indian tribes in the development of a geographic information system database of fish and wildlife habitat and corridors that would inform planning and development decisions within each State and Indian tribe, enable each State and Indian tribe to model climate impacts and adaptation, and provide geographically specific enhancements of State and tribal wildlife action plans;

(2) ensure the collaborative development, with the States and Indian tribes, of a comprehensive, national geographic information system database of maps, models, data, surveys, informational products, and other geospatial information regarding fish and wildlife habitat and corridors, that—

(A) is based on consistent protocols for sampling and mapping across landscapes that take into account regional differences; and

(B) that utilizes—

(i) existing and planned State- and tribal-based geographic information system databases; and

(ii) existing databases, analytical tools, metadata activities, and other information products available through the National Biological Information Infrastructure maintained by the Secretary and nongovernmental organizations; and

(3) facilitate the use of such databases by Federal, State, local, and tribal decisionmakers to incorporate qualitative information on fish and wildlife habitat and corridors at the earliest possible stage to—

(A) prioritize and target natural resources adaptation strategies and activities;

(B) avoid, minimize, and mitigate the impacts on fish and wildlife habitat and corridors in siting energy development, water, transmission, transportation, and other land use projects;

(C) assess the impacts of existing development on habitats and corridors; and

(D) develop management strategies to enhance the ability of fish, wildlife, and plant species to migrate or respond to shifting habitats within existing habitats and corridors.

(c) HABITAT AND CORRIDORS INFORMATION SYSTEM.—

(1) IN GENERAL.—The Secretary, in cooperation with the States and Indian tribes, shall develop a Habitat and Corridors Information System.

(2) CONTENTS.—The System shall—

(A) include maps, data, and descriptions of fish and wildlife habitat and corridors, that—

(i) have been developed by Federal agencies, State wildlife agencies and natural heritage programs, Indian tribes, local governments, nongovernmental organizations, and industry;

(ii) meet accepted Geospatial Interoperability Framework data and metadata protocols and standards;

(B) include maps and descriptions of projected shifts in habitats and corridors of fish

and wildlife species in response to climate change;

(C) assure data quality and make the data, models, and analyses included in the System available at scales useful to decisionmakers—

(i) to prioritize and target natural resources adaptation strategies and activities;

(ii) to assess the impacts of proposed energy development, water, transmission, transportation, and other land use projects and avoid, minimize, and mitigate those impacts on habitats and corridors;

(iii) to assess the impacts of existing development on habitats and corridors; and

(iv) to develop management strategies to enhance the ability of fish, wildlife, and plant species to migrate or respond to shifting habitats within existing habitats and corridors;

(D) establish a process for updating maps and other information as landscapes, habitats, corridors, and wildlife populations change or as other information becomes available;

(E) encourage the development of collaborative plans by Federal and State agencies and Indian tribes to monitor and evaluate the efficacy of the System to meet the needs of decisionmakers;

(F) identify gaps in habitat and corridor information, mapping, and research that should be addressed to fully understand and assess current data and metadata, and to prioritize research and future data collection activities for use in updating the System and provide support for those activities;

(G) include mechanisms to support collaborative research, mapping, and planning of habitats and corridors by Federal and State agencies, Indian tribes, and other interested stakeholders;

(H) incorporate biological and geospatial data on species and corridors found in energy development and transmission plans, including renewable energy initiatives, transportation, and other land use plans;

(I) be based on the best scientific information available; and

(J) identify, prioritize, and describe key parcels of non-Federal land located within the boundaries of units of the National Park System, National Wildlife Refuge System, National Forest System, or National Grassland System that are critical to maintenance of wildlife habitat and migration corridors.

(d) FINANCIAL AND OTHER SUPPORT.—The Secretary may provide support to the States and Indian tribes, including financial and technical assistance, for activities that support the development and implementation of the System.

(e) COORDINATION.—The Secretary, in cooperation with the States and Indian tribes, shall make recommendations on how the information developed in the System may be incorporated into existing relevant State and Federal plans affecting fish and wildlife, including land management plans, the State Comprehensive Wildlife Conservation Strategies, and appropriate tribal conservation plans, to ensure that they—

(1) prevent unnecessary habitat fragmentation and disruption of corridors;

(2) promote the landscape connectivity necessary to allow wildlife to move as necessary to meet

biological needs, adjust to shifts in habitat, and adapt to climate change; and

(3) minimize the impacts of energy, development, water, transportation, and transmission projects and other activities expected to impact habitat and corridors.

(f) DEFINITIONS.—In this section:

(1) GEOSPATIAL INTEROPERABILITY FRAMEWORK.—The term ''Geospatial Interoperability Framework'' means the strategy utilized by the National Biological Information Infrastructure that is based upon accepted standards, specifications, and protocols adopted through the International Standards Organization, the Open Geospatial Consortium, and the Federal Geographic Data Committee, to manage, archive, integrate, analyze, and make accessible geospatial and biological data and metadata.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 482. ADDITIONAL PROVISIONS REGARDING INDIAN TRIBES.

(a) FEDERAL TRUST RESPONSIBILITY.—Nothing in this subpart is intended to amend, alter, or give priority over the Federal trust responsibility to Indian tribes.

(b) EXEMPTION FROM FOIA.—Information received by a Federal agency pursuant to this Act relating to the location, character, or ownership of human remains of a person of Indian ancestry; or resources, cultural items, uses, or activities identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature to the Indian tribe; shall not be subject to disclosure under section 552 of title 5, United States Code, if the head of the agency, in consultation with the Secretary of the Interior and an affected Indian tribe, determines that disclosure may—

(1) cause a significant invasion of privacy;

(2) risk harm to the human remains or resources, cultural items, uses, or activities; or

(3) impede the use of a traditional religious site by practitioners.

(c) APPLICATION OF OTHER LAW.—The Secretary of the Interior may apply the provisions of Public Law 93–638 where appropriate in the implementation of this subpart.

PART 2—INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

SEC. 491. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Global climate change is a potentially significant national and global security threat multiplier and is likely to exacerbate competition and conflict over agricultural, vegetative, marine, and water resources and to result in increased displacement of people, poverty, and hunger within developing countries.

(2) The strategic, social, political, economic, cultural, and environmental consequences of global climate change are likely to have disproportionate adverse impacts on developing countries, which have less economic capacity to respond to such impacts.

(3) The countries most vulnerable to climate change, due both to greater exposure to harmful impacts and to lower capacity to adapt, are developing countries with very low industrial greenhouse gas emissions that have contributed less to climate change than more affluent countries.

(4) To a much greater degree than developed countries, developing countries rely on the natural and environmental systems likely to be affected by climate change for sustenance, livelihoods, and economic growth and stability.

(5) Within developing countries there may be varying climate change adaptation and resilience

needs among different communities and populations, including impoverished communities, children, women, and indigenous peoples.

(6) The consequences of global climate change, including increases in poverty and destabilization of economies and societies, are likely to pose long-term challenges to the national security, foreign policy, and economic interests of the United States.

(7) It is in the national security, foreign policy, and economic interests of the United States to recognize, plan for, and mitigate the international strategic, social, political, cultural, environmental, health, and economic effects of climate change and to assist developing countries to increase their resilience to those effects.

(8) Under Article 4 of the United Nations Framework Convention on Climate Change, developed country parties, including the United States, committed to ''assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects''.

(9) Under the Bali Action Plan, developed country parties to the United Nations Framework Convention on Climate Change, including the United

States, committed to ''enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation,'' including, inter alia, consideration of ''improved access to adequate, predictable, and sustainable financial resources and financial and technical support, and the provision of new and additional resources, including official and concessional funding for developing country parties''.

(b) PURPOSES.—The purposes of this part are—

(1) to provide new and additional assistance from the United States to the most vulnerable developing countries, including the most vulnerable communities and populations therein, in order to support the development and implementation of climate change adaptation programs and activities that reduce the vulnerability and increase the resilience of communities to climate change impacts, including impacts on water availability, agricultural productivity, flood risk, coastal resources, timing of seasons, biodiversity, economic livelihoods, health and diseases, and human migration; and

(2) to provide such assistance in a manner that protects and promotes the national security, foreign policy, environmental, and economic interests of the

United States to the extent such interests may be advanced by minimizing, averting, or increasing resilience to climate change impacts.

SEC. 492. DEFINITIONS.

In this part:

(1) ALLOWANCE.—The term ''allowance'' means an emission allowance established under section 721 of the Clean Air Act.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committees on Energy and Commerce, Financial Services, and Foreign Affairs of the House of Representatives; and

(B) the Committees on Environment and Public Works and Foreign Relations of the Senate.

(3) DEVELOPING COUNTRY.—The term ''developing country'' means a country eligible to receive official development assistance according to the income guidelines of the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(4) MOST VULNERABLE DEVELOPING COUNTRIES.—The term ''most vulnerable developing

countries'' means, as determined by the Administrator of USAID, developing countries that are at risk of substantial adverse impacts of climate change and have limited capacity to respond to such impacts, considering the approaches included in any international treaties and agreements.

(5) MOST VULNERABLE COMMUNITIES AND POPULATIONS.—The term ''most vulnerable communities and populations'' means communities and populations that are at risk of substantial adverse impacts of climate change and have limited capacity to respond to such impacts, including impoverished communities, children, women, and indigenous peoples.

(6) PROGRAM.—The term ''Program'' means the International Climate Change Adaptation Program established under section 493.

(7) USAID.—The term ''USAID'' means the United States Agency for International Development.

(8) UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE.—The term ''United Nations Framework Convention on Climate Change'' or ''Convention'' means the United Nations Framework Convention on Climate Change done at New York on

May 9, 1992, and entered into force on March 21, 1994.

SEC. 493. INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of State, in consultation with the Administrator of USAID, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, shall establish an International Climate Change Adaptation Program in accordance with the requirements of this part.

(b) ALLOWANCE ACCOUNT.—Allowances allocated pursuant to section 782(n) of the Clean Air Act shall be available for distribution to carry out the Program established under subsection (a).

(c) SUPPLEMENT NOT SUPPLANT.—Assistance provided under this part shall be used to supplement, and not to supplant, any other Federal, State, or local resources available to carry out activities of the type carried out under the Program.

SEC. 494. DISTRIBUTION OF ALLOWANCES.

(a) IN GENERAL.—The Secretary of State, or such other Federal agency head as the President may designate, after consultation with the Secretary of the Treasury, the Administrator of USAID, and the Administrator

of the Environmental Protection Agency, shall direct the distribution of allowances to carry out the Program—

(1) in the form of bilateral assistance pursuant to the requirements under section 495;

(2) to multilateral funds or international institutions pursuant to the Convention or an agreement negotiated under the Convention; or

(3) through a combination of the mechanisms identified under paragraphs (1) and (2).

(b) LIMITATION.—

(1) CONDITIONAL DISTRIBUTION TO MULTILATERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—In any fiscal year, the Secretary of State, or such other Federal agency head as the President may designate, in consultation with the Administrator of USAID, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, shall distribute at least 40 percent and up to 60 percent of the allowances available to carry out the Program to one or more multilateral funds or international institutions that meet the requirements of paragraph (2), if any such fund or institution exists, and shall annually certify in a report to the appropriate congressional committees that any multilateral fund or international institution receiving allow-

ances under this section meets the requirements of paragraph (2) or that no multilateral fund or international institution that meets the requirements of paragraph (2) exists, as the case may be. The Secretary of State shall notify the appropriate congressional committees not less than 15 days prior to any transfer of allowances to a multilateral fund or international institution pursuant to this section.

(2) MULTILATERAL FUND OR INTERNATIONAL INSTITUTION ELIGIBILITY.—A multilateral fund or international institution is eligible to receive allowances available to carry out the Program—

(A) if—

(i) such fund or institution is established pursuant to—

(I) the Convention; or

(II) an agreement negotiated under the Convention; or

(ii) the allowances are directed to one or more multilateral development banks or international development institutions, pursuant to an agreement negotiated under such Convention; and

(B) if such fund or institution—

(i) specifies the terms and conditions under which the United States is to provide allowances to the fund or institution, and under which the fund or institution is to provide assistance to recipient countries;

(ii) ensures that assistance from the United States to the fund or institution and the principal and income of the fund or institution are disbursed only for purposes that are consistent with those described in section 491(b)(1);

(iii) requires a regular meeting of a governing body of the fund or institution that includes representation from countries among the most vulnerable developing countries and provides public access;

(iv) requires that local communities and indigenous peoples in areas where any activities or programs are planned are engaged through adequate disclosure of information, public participation, and consultation; and

(v) prepares and makes public an annual report that—

(I) describes the process and methodology for selecting the recipients of assistance from the fund or institution, including assessments of vulnerability;

(II) describes specific programs and activities supported by the fund or institution and the extent to which the assistance is addressing the adaptation needs of the most vulnerable developing countries, and the most vulnerable communities and populations therein;

(III) describes the performance goals for assistance authorized under the fund or institution and expresses such goals in an objective and quantifiable form, to the extent practicable;

(IV) describes the performance indicators to be used in measuring or assessing the achievement of the performance goals described in subclause (III);

(V) provides a basis for recommendations for adjustments to as-

sistance authorized under this part to enhance the impact of such assistance; and

(VI) describes the participation of other nations and international organizations in supporting and governing the fund or institution.

(c) OVERSIGHT.—

(1) DISTRIBUTION TO MULTILATERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—The Secretary of State, or such other Federal agency head as the President may designate, in consultation with the Administrator of USAID, shall oversee the distribution of allowances available to carry out the Program to a multilateral fund or international institution under subsection (b).

(2) BILATERAL ASSISTANCE.—The Administrator of USAID, in consultation with the Secretary of State, shall oversee the distribution of allowances available to carry out the Program for bilateral assistance under section 495.

SEC. 495. BILATERAL ASSISTANCE.

(a) ACTIVITIES AND FOREIGN AID.—

(1) IN GENERAL.—In order to achieve the purposes of this part, the Administrator of USAID may

carry out programs and activities and distribute allowances to any private or public group (including international organizations and faith-based organizations), association, or other entity engaged in peaceful activities to—

(A) provide assistance to the most vulnerable developing countries for—

(i) the development of national or regional climate change adaptation plans, including a systematic assessment of socio-economic vulnerabilities in order to identify the most vulnerable communities and populations;

(ii) associated national policies; and

(iii) planning, financing, and execution of adaptation programs and activities;

(B) support investments, capacity-building activities, and other assistance, to reduce vulnerability and promote community-level resilience related to climate change and its impacts in the most vulnerable developing countries, including impacts on water availability, agricultural productivity, flood risk, coastal resources, timing of seasons, biodiversity, economic livelihoods, health, human migration, or other social,

economic, political, cultural, or environmental matters;

(C) support climate change adaptation research in or for the most vulnerable developing countries;

(D) reduce vulnerability and provide increased resilience to climate change for local communities and livelihoods in the most vulnerable developing countries by encouraging—

(i) the protection and rehabilitation of natural systems;

(ii) the enhancement and diversification of agricultural, fishery, and other livelihoods; and

(iii) the reduction of disaster risks;

(E) support the deployment of technologies to help the most vulnerable developing countries respond to the destabilizing impacts of climate change and encourage the identification and adoption of appropriate renewable and efficient energy technologies that are beneficial in increasing community-level resilience to the impacts of global climate change in those countries; and

(F) encourage the engagement of local communities through disclosure of information, consultation, and the communities' informed participation relating to the development of plans, programs, and activities to increase community-level resilience to climate change impacts.

(2) LIMITATIONS.—Not more than 10 percent of the allowances made available to carry out bilateral assistance under this part in any year shall be distributed to support activities in any single country.

(3) PRIORITIZING ASSISTANCE.—In providing assistance under this section, the Administrator of USAID shall give priority to countries, including the most vulnerable communities and populations therein, that are most vulnerable to the adverse impacts of climate change, determined by the likelihood and severity of such impacts and the country's capacity to adapt to such impacts.

(b) COMMUNITY ENGAGEMENT.—

(1) IN GENERAL.—The Administrator of USAID shall ensure that local communities, including the most vulnerable communities and populations therein, in areas where any programs or ac-

tivities are carried out pursuant to this section are engaged in, through disclosure of information, public participation, and consultation, the design, implementation, monitoring, and evaluation of such programs and activities.

(2) CONSULTATION AND DISCLOSURE.—For each country receiving assistance under this section, the Administrator of USAID shall establish a process for consultation with, and disclosure of information to, local, national, and international stakeholders regarding any programs and activities carried out pursuant to this section.

(c) COORDINATION.—

(1) ALIGNMENT OF ACTIVITIES.—Subject to the direction of the President and the Secretary of State, the Administrator of USAID shall, to the extent practicable, seek to align activities under this section with broader development, poverty alleviation, or natural resource management objectives and initiatives in the recipient country.

(2) COORDINATION OF ACTIVITIES.—The Administrator of USAID shall ensure that there is coordination among the activities under this section, subtitle D of this title, and part E of title VII of the

Clean Air Act, in order to maximize the effectiveness of United States assistance to developing countries.

(d) REPORTING.—

(1) INITIAL REPORT.—Not later than 180 days after the date of enactment of this part, the Administrator of USAID, in consultation with the Secretary of State, shall submit to the President and the appropriate congressional committees an initial report that—

(A) based on the most recent information available from reliable public sources or knowledge obtained by USAID on a reliable basis, as determined by the Administrator of USAID, identifies the developing countries, including the most vulnerable communities and populations therein, that are most vulnerable to climate change impacts and in which assistance may have the greatest and most sustainable benefit in reducing vulnerability to climate change; and

(B) describes the process and methodology for selecting the recipients of assistance under subsection (a)(1).

(2) ANNUAL REPORTS.—Not later than 18 months after the date on which the initial report is submitted pursuant to paragraph (1), and annually

thereafter, the Administrator of USAID, in consultation with the Secretary of State, shall submit to the President and the appropriate congressional committees a report that—

(A) describes the extent to which global climate change, through its potential negative impacts on sensitive populations and natural resources in the most vulnerable developing countries, may threaten, cause, or exacerbate political, economic, environmental, cultural, or social instability or international conflict in those regions;

(B) describes the ramifications of any potentially destabilizing impacts climate change may have on the national security, foreign policy, and economic interests of the United States, including—

(i) the creation of environmental migrants and internally displaced peoples;

(ii) international or internal armed conflicts over water, food, land, or other resources;

(iii) loss of agricultural and other livelihoods, cultural stability, and other causes

of increased poverty and economic destabilization;

(iv) decline in availability of resources needed for survival, including water;

(v) increased impact of natural disasters (including droughts, flooding, and other severe weather events);

(vi) increased prevalence or virulence of climate-related diseases; and

(vii) intensified urban migration;

(C) describes how allowances available under this section were distributed during the previous fiscal year to enhance the national security, foreign policy, and economic interests of the United States and assist in avoiding the economically, politically, environmentally, culturally, and socially destabilizing impacts of climate change in most vulnerable developing countries;

(D) identifies and recommends the developing countries, including the most vulnerable communities and populations therein, that are most vulnerable to climate change impacts and in which assistance may have the greatest and most sustainable benefit in reducing vulner-

ability to climate change, including in the form of deploying technologies, investments, capacity-building activities, and other types of assistance for adaptation to climate change impacts and approaches to reduce greenhouse gases in ways that may also provide community-level resilience to climate change impacts; and

(E) describes cooperation undertaken with other nations and international organizations to carry out this part.

(e) MONITORING AND EVALUATION.—

(1) IN GENERAL.—The Administrator of USAID shall establish and implement a system to monitor and evaluate the effectiveness and efficiency of assistance provided under this section in order to maximize the long-term sustainable development impact of such assistance, including the extent to which such assistance is meeting the purposes of this part and addressing the adaptation needs of developing countries.

(2) REQUIREMENTS.—In carrying out paragraph (1), the Administrator of USAID shall—

(A) in consultation with national governments in recipient countries, establish performance goals for assistance authorized under this

section and express such goals in an objective and quantifiable form, to the extent practicable;

(B) establish performance indicators to be used in measuring or assessing the achievement of the performance goals described in subparagraph (A), including an evaluation of—

(i) the extent to which assistance under this section provided for disclosure of information to, consultation with, and informed participation by local communities;

(ii) the extent to which local communities participated in the design, implementation, and evaluation of programs and activities implemented pursuant to this section; and

(iii) the impacts of such participation on the goals and objectives of the programs and activities implemented under this section;

(C) provide a basis for recommendations for adjustments to assistance authorized under this section to enhance the impact of such assistance; and

(D) include, in the annual report to the appropriate congressional committees and other relevant agencies required under subsection (d)(2), findings resulting from the monitoring and evaluation of programs and activities under this section.

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